

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 115

THE UNITED STATES OF AMERICA, PETITIONER

vs.

WILLIAM R. JOHNSON

No. 116

THE UNITED STATES OF AMERICA, PETITIONER

vs.

**JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM P.
KELLY, AND STUART SOLOMON BROWN**

**ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**PETITION FOR CERTIORARI FILED JUNE 6, 1945
CERTIORARI GRANTED OCTOBER 8, 1945**

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 7500.

vs.

WILLIAM R. JOHNSON,

Defendant-Appellant.

THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 7501.

vs.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM
P. KELLY AND STUART SOLOMON BROWN,

Defendants-Appellants.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

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PLEAS had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois, begun and held in the United States Court Room in the City of Chicago, in the division and District aforesaid on the first Monday of November (it being the 6th day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-four and of the Independence of the United States of America the 168th year.

Present:

Honorable John P. Barnes, District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. LaBuy, District Judge
Honorable Elwyn R. Shaw, District Judge
Honorable William H. Holly, District Judge

Roy H. Johnson, *Clerk*

William H. McDonnell, Esquire, *Marshal*

On Friday, December 15, 1944

Court met pursuant to adjournment

Present: Honorable John P. Barnes, Trial Judge.

IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

United States of America

v.

William R. Johnson, Jack Sommers,
James A. Hartigan, William P. Kelly
and Stuart Solomon Brown

No. 32168

BE IT REMEMBERED that on the 27th day of March A.D. 1944 there was filed in the Clerk's office of said Court a certain petition of Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown for allowance of an appeal in words and figures following, to-wit:

(Petition of Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown for allowance of an appeal is not copied here as the same is set out in full in the Bill of Exceptions.)

And on, the same day to wit, the 27th day of March A.D. 1944 there was filed in the Clerk's office of said Court a certain petition of William R. Johnson for allowance of an appeal in words and figures following, to wit:

(Petition of William R. Johnson for allowance of an appeal is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards, to wit, on the 29th day of March A.D. 1944, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

(Order of the District Court of the United States, entered on the 29th day of March, A.D. 1944, is not copied here as the same is set out in full in the Bill of Exceptions.)

And on the same day, to wit, on the 29th day of March A.D. 1944, being one of the days of the regular March term of said Court, in the record of proceedings thereof,

in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

(Order of the District Court of the United States, entered on the 29th day of Mar., A.D. 1944 is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 28th day of November A.D. 1944 there was filed in the Clerk's office of said Court a certain Certified Copy of Order from Circuit Court of Appeals in words and figures following, to wit:

(Order of the U. S. Circuit Court of Appeals, filed on the 28th day of November, 1944, is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards, on the same day to wit, on the 28th day of November A.D. 1944, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

(Order entered on the 28th day of November, A.D. 1944, is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 30th day of November A.D. 1944 came the defendants by their attorneys and filed in the Clerk's office of said Court certain Notice and Motion For Production of Documents in words and figures following, to wit:

(Notice and Motion of the defendants for Protection of Documents are not copied here as the same are set out in full in the Bill of Exceptions.)

And on the same day, to wit, on the 30th day of November A.D. 1944, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

(Order entered on November 30, 1944, is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 4th day of December A.D. 1944 came the defendants by their attorneys and filed in the Clerk's office of said Court a certain Notice and Amend-

References to Bill of Exceptions

ed Motion For New Trial and Exhibits Attached to And Forming Part of said Amended Motion in words and figures following, to wit:

(Notice and Amended Motion For New Trial and Exhibits Attached To And Forming Part of said Amended Motion are not copied here as the same are set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 7th day of December A.D. 1944 came the Government by its attorneys and filed in the Clerk's office of said Court certain Notice and Government's Answer to Defendants' Amended Motion For New Trial in words and figures following, to wit:

(Notice and Government's Answer to Defendants' Amended Motion for New Trial are not copied here as the same are set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 11th day of December A.D. 1944 came the defendants by their attorneys and filed in the Clerk's office of said Court certain Notice and Reply Of Defendants To Government's Answer To Defendants' Amended Motion For New Trial in words and figures following, to wit:

(Notice and Reply of Defendants to Government's Answer to Defendants' Amended Motion For New Trial are not copied here as the same are set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 15th day of December A.D. 1944 there was filed in the Clerk's office of said Court a certain opinion of the Court entitled "Memorandum" in words and figures following, to wit:

(Opinion of the Court entitled "Memorandum" is not copied here as the same is set out in full in the Bill of Exceptions.)

And on the same day, to wit, on the 15th day of December A.D. 1944, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

(Order of the District Court of the United States entered on the 15th day of December, A.D. 1944, denying the defendants' amended motion for a new trial, is not copied here as the same is set out in full in the Bill of Exceptions.)

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division

Friday, December 15, 1944

Present:

Honorable John P. Barnes, District Judge

(Caption—Docket No. 32168)

The defendants by their counsel pray an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order this day entered herein, which appeal is allowed.

And afterwards, to wit, the 19th day of December A.D. 1944 came the defendant Stuart Solomon Brown by his attorney and filed in the Clerk's office of said Court a certain Notice and Motion To Modify Order of December 15, 1944 Denying Defendants' Amended Motion For A New Trial in words and figures following, to wit:

(Notice and Motion to Modify Order of December 15, 1944, Denying Defendants' Amended Motion For A New Trial are not copied here as the same are set out in full in the Bill of Exceptions.)

And on the same day to wit, on the 19th day of December A.D. 1944, being one of the days of the regular December term of said Court; in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

This day comes the defendant Stuart Solomon Brown and by his counsel enters herein his motion for modification of the order entered on December 15, A.D. 1944 and the Court, having heard arguments of counsel and being fully advised in the premises said motion is denied.

And afterwards on, to wit, the 21st day of December A.D. 1944 came the defendant William R. Johnson by his attorneys and filed in the Clerk's office of said Court a certain Notice of Appeal in words and figures following, to wit:

(Notice of Appeal is not copied here as the same is set out in full in the Bill of Exceptions.)

References to Bill of Exceptions

And on the same day, to wit, the 21st day of December A.D. 1944 came the defendants Jack Sommers, et al by their attorneys and filed in the Clerk's office of said Court a certain Notice of Appeal in words and figures following, to wit:

(Notice of Appeal is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards, to wit, on the 22nd day of December A.D. 1944 being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

(Order that parties appear on December 27, 1944 for directions as to the preparation of the record on appeal is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards, to wit, on the 27th day of December A.D. 1944, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes District Judge, appears the following entry, to wit:

(Order fixing time for settling Bill of Exceptions and for filing Assignment of Errors is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 13th day of January A.D. 1944 came the defendants by their attorneys and filed in the Clerk's office of said Court a certain Praecept For Record in words and figures following, to wit:

(Praecept for Record is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 17th day of January A.D. 1945 came the defendants by their attorneys and filed in the Clerk's office of said Court certain Assignment of Errors in words and figures following, to wit:

(Assignment of Errors is not copied here as the same is set out in full in the Bill of Exceptions.)

And afterwards on, to wit, the 19th day of January A.D. 1945 came the defendants by their attorneys and filed in the Clerk's office of said Court certain Notice and Motion

To Settle Bill of Exceptions in words and figures following,
to wit:

(Notice and Motion to Settle Bill of Exceptions
are not copied here.)

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

United States of America

vs.

William R. Johnson, Jack Sommers,
James A. Hartigan, William P.
Kelly and Stuart Solomon Brown.

No. 32,168

INDEX TO BILL OF EXCEPTIONS.

VOLUME I.

Volume I of Bill of Exceptions, approved and filed on
January 28, 1944, which is comprised of the following:

Order entered on October 15, 1943, by the United States
Circuit Court of Appeals for the Seventh Circuit.

Motion of defendants for the Court to fix and determine
a short day wherein the defendants may file with the Clerk
of this Court a motion for a new trial.

Order of this Court entered on October 19, 1943, fixing
the time within which defendants may file motion for a new
trial and within which Government may file reply thereto.

Motion of defendants for a new trial and brief in support
of said motion.

Government's answer to defendants' motion for a new
trial.

Appendix to defendants' brief in support of a motion for
a new trial.

Brief of Government in opposition to defendants' mo-
tion for a new trial.

Affidavit of Frank Sampson (Govt. Ex. 23) and affidavit
of Lawrence LaCharity (Govt. Ex. 24).

Defendants' reply brief.

Affidavit of Louis Baum (Defts. Ex. 73).

Affidavit of Leo E. Blockus (Defts. Ex. 72).

Photostatic copy of request for subpoenas and Marshal's Return (Govt. Ex. 2), affidavit of Nate Jacobs (Govt. Ex. 21) and Government's Ex. 22.

Minutes of proceedings had on November 15, 1943, at the conclusion of oral argument on motion for a new trial.

VOLUME II.

Volume II of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of Exhibit consisting of printed bill of exceptions (Volume I and Volume II) in appeals Nos. 7500 and 7501, *United States v. William R. Johnson*, and *United States v. Sommers, et al.*

VOLUME III.

Volume III of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of the following:

Memorandum of Opinion on defendants' motion for a new trial filed herein by this Court on the 28th day of December, 1943.

Minutes of proceedings had on December 31, 1943.

Order of Court entered herein on December 31, 1943, denying the defendants' motion for a new trial.

Assignments of error.

Motion to settle and sign bill of exceptions. Order entered herein on January 26, 1944.

Certified copies of applications of the defendants for subpoenas for the appearance of William Goldstein and J. L. Smith, for subpoenas duces tecum to Piazza and O'Donnell, Piper Service Station, Inc. and Sinclair Oil Company, subpoenas and return of Marshall thereon.

VOLUME IV.

Volume IV of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of transcript of stenographic notes of the proceedings at the trial herein (Pages 21 to 1651).

VOLUME V.

Volume V of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of transcript of stenographic notes of the proceedings at the trial herein (Pages 1652 to 3399).

VOLUME VI.

Volume VI of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of transcript of stenographic notes of the proceedings at the trial herein (Pages 3400 to 4961).

VOLUME VII.

Volume VII of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of transcript of stenographic notes of the proceedings at the trial herein (Pages 4962 to 6592, and Pages 6637 to 6644).

VOLUME VIII.

Petition of Jack Sommers, et al, that they be permitted to take an appeal.

Petition of William R. Johnson that he be permitted to take an appeal.

Order entered March 29, 1944, allowing said appeal by Jack Sommers, et al.

Order entered March 29, 1944, allowing said appeal by William R. Johnson.

Certified copy of order of United States Circuit Court of Appeals entered on November 16, 1944, remanding the cause to the District Court with directions.

Order entered on November 28, 1944, prescribing the time for the filing of the amended motion for a new trial, Government's answer thereto, and reply of defendants, and setting hearing on said motion.

Notice and motion of defendants for production of documents.

Order entered November 30, 1944, for production of documents.

Notice and amended motion for a new trial and exhibits attached to and forming part of said motion, filed on December 4, 1944.

Notice and Government's answer to defendants' amended motion for a new trial.

Notice and defendants' reply to Government's answer to defendants' amended motion for a new trial.

VOLUME IX.

Memorandum opinion of Court filed on December 15, 1944.

Order entered December 15, 1944, denying and overruling defendants' amended motion for a new trial.

Minutes of proceedings had on December 15, 1944, in which Court allowed appeal.

~~Notice and motion to modify order of December 15, 1944.~~

~~Minutes of proceedings had on December 19, 1944, in which Court denied motion to modify.~~

Notice of appeal of William R. Johnson.

Notice of appeal of Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown.

Order entered on December 22, 1944, that parties appear for directions with regard to the preparation of record on appeal.

Order entered on December 27, 1944, prescribing time within which Bill of Exceptions is to be settled and filed, and Assignment of Errors is to be filed.

Praeclipe for record.

Assignment of Errors.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—Docket No. 32,168)

BILL OF EXCEPTIONS.

Be it remembered that on the 16th day of October, 1943, the above entitled criminal cause came before this Court, the Honorable John P. Barnes presiding, on the order of the United States Circuit Court of Appeals for the Seventh Circuit, entered on the 15th day of October, 1943, remanding the said cause to this Court, and that the following proceedings were thereafter had:

(The said proceedings so had are herein set forth in Nine volumes; comprising this Bill of Exceptions, each of which said volumes sets forth and contains the following respective proceedings next listed under each of said volumes:

VOLUME I.

Volume I of Bill of Exceptions approved and filed on January 28, 1944, comprised of the following:

Order entered on October 15, 1943, by the United States Circuit Court of Appeals for the Seventh Circuit.

Motion of defendants for the Court to fix and determine a short day wherein the defendants may file with the Clerk of this Court a motion for a new trial.

Order of this Court entered on October 19, 1943, fixing the time within which defendants may file motion for a new trial and within which Government may file reply thereto.

Motion of defendants for a new trial and brief in support of said motion.

Government's answer to defendants' motion for a new trial.

Appendix to defendants' brief in support of a motion for a new trial.

Brief of Government in opposition to defendants' motion for a new trial.

Affidavit of Frank Sampson (Govt. Ex. 23) and affidavit of Lawrence LaCharity (Govt. Ex. 24).

Defendants' reply brief.

Affidavit of Louis Baum (Defts. Ex. 73).

Affidavit of Leo E. Blockus (Defts. Ex. 72).

Photostatic copy of request for subpoenas and Marshal's return (Govt. Ex. 2), affidavit of Nate Jacobs (Govt. Ex. 21) and Government's Ex. 22.

Minutes of proceedings had on November 15, 1943, at the conclusion of oral argument on motion for a new trial.

VOLUME II.

Volume II of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of Exhibit consisting of printed Bill of Exceptions (Volume I and Volume II) in appeals Nos. 7500 and 7501, *United States v. William R. Johnson*, and *United States v. Sommers, et al.*

VOLUME III.

Volume III of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of the following:

Memorandum of Opinion on defendants' motion for a new trial filed herein by this Court on the 28th day of December, 1943.

Minutes of proceedings had on December 31, 1943.

Order of Court entered herein on December 31, 1943, denying the defendants' motion for a new trial.

Assignments of error.

Motion to settle and sign bill of exceptions. Order entered herein on January 26, 1944.

Certified copies of applications of the defendants for subpoenas for the appearance of William Goldstein and J. L. Smith, for subpoenas *duces tecum* to Piazza and O'Donnell, Piper Service Station, Inc. and Sinclair Oil Company, subpoenas and return of Marshal thereon.

VOLUMES IV TO VII.

Volumes IV to VII of Bill of Exceptions approved and filed on January 28, 1944, which is comprised of the transcript of stenographic notes of the proceedings on the trial herein, including opening and closing arguments of counsel.

VOLUME VIII.

Petition of Jack Sommers, et al, that they be permitted to take an appeal.

Petition of William R. Johnson that he be permitted to take an appeal.

Order entered March 29, 1944, allowing said appeal by Jack Sommers, et al.

Order entered March 29, 1944, allowing said appeal by William R. Johnson.

Certified copy of order of United States Circuit Court of Appeals entered on November 16, 1944, remanding the cause to the District Court with directions.

Order entered on November 28, 1944, prescribing the time for the filing of the amended motion for a new trial, Government's answer thereto, and reply of defendants, and setting hearing on said motion.

Notice and motion of defendants for production of documents.

Order entered November 30, 1944, for production of documents.

*Notice and amended motion for a new trial and exhibits attached to and forming part of said motion, filed on December 4, 1944.

Notice and Government's answer to defendants' amended motion for a new trial.

Notice and defendants' reply to Government's answer to defendants' amended motion for a new trial.

VOLUME IX.

Memorandum opinion of Court filed on December 15, 1944.

Order entered December 15, 1944, denying and overruling defendants' amended motion for a new trial.

Minutes of proceedings had on December 15, 1944, in which Court allowed appeal.

Notice and motion to modify order of December 15, 1944.

Minutes of proceedings had on December 19, 1944, in which Court denied motion to modify.

Notice of appeal of William R. Johnson.

Notice of appeal of Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown.

Order entered on December 22, 1944, that parties appear for directions with regard to the preparation of record on appeal.

Order entered on December 27, 1944, prescribing time within which Bill of Exceptions is to be settled and filed, and Assignment of Errors is to be filed.

Praecept for record.

(Assignment of Errors.)

1 On the 27th day of March, 1944, the defendants, Jack Sommers, James A. Hartigan; William P. Kelly and Stuart Solomon Brown, filed a petition praying that they be permitted to take an appeal, which said petition was in words and figures as follows, to-wit:

Filed
Mar. 22
1944

2 IN THE DISTRICT COURT OF THE UNITED STATES,
For the Northern District of Illinois
Eastern Division
(Caption—No. 32,168)

PETITION FOR ALLOWANCE OF AN APPEAL.

To:

The Honorable John P. Barnes,
Judge of the District Court of
the United States for the Northern
District of Illinois, Eastern Division.

Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, your petitioners, who are the defendants in the above-entitled cause pray that they be permitted to take an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order

denying the motion for new trial, entered in the above cause on the 31st day of December, 1943, for the reasons specified in the assignment of errors heretofore filed in this Court on the 22nd day of January, 1944.

(sgd) *Harold R. Schradzke*

Harold R. Schradzke,

Attorney for Jack Sommers, James

A. Hartigan, William P. Kelly

and Stuart Solomon Brown

Dated March 27th, 1944.

Appeal allowed this day of March, 1944.

District Judge

Filed Mar. 27, 1944
3 On the 27th day of March, 1944, the defendant, William R. Johnson, filed a petition praying that he be permitted to take an appeal, which said petition was in words and figures as follows, to-wit:

4 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

United States of America

vs.

William R. Johnson

} No. 32,168.

PETITION FOR ALLOWANCE OF AN APPEAL

To:

The Honorable John P. Barnes,
Judge of the District Court of
the United States for the Northern
District of Illinois, Eastern Division.

William R. Johnson, your petitioner, who is the defendant in the above-entitled cause prays that he be permitted to take an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order denying

the motion for new trial, entered in the above cause on the 31st day of December, 1943, for the reasons specified in the assignment of errors heretofore filed in this Court on the 22nd day of January, 1944.

(Sgd) *William J. Dempsey*

William J. Dempsey,

Attorney for William R. Johnson.

Dated March 27th, 1944.

Appeal allowed this day of March, 1944.

District Judge.

5 Thereafter on the 29th day of March, 1944, this Court entered the following order in words and figures, to-wit:

Entered
Mar. 29
1944

6 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—D. C. No. 32168)

ORDER.

This cause coming on to be heard on the petition of Jack Sommers, James A. Hartigan, William P. Kelly, and Stuart Solomon Brown, praying that, for the reasons specified in their Assignment of Errors heretofore filed in this Court on the 22nd day of January, 1944, they be permitted to take an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order of this Court denying their motion for a new trial, which order was entered on the 31st day of December, 1943; and it appearing to the Court

(1) That petitioners insist that they are entitled to an order allowing an appeal as a matter of right;

(2) That petitioners state to the Court no reason for the Court's now making an order allowing an appeal other than the reason set forth in sub-paragraph (1) hereof;

(3) That this is the first motion of this kind that has been presented to the Court since the Rules of Practice and Procedure after Plea of Guilty, Verdict or Finding of Guilt in Criminal Cases, promulgated on March 7, 1934, became effective;

(4) That this Court, not having been advised by counsel for the petitioners of any reason why an order allowing an appeal should now be made other than that set forth in sub-paragraph numbered (1) hereof, makes no finding as to whether or not an order allowing an appeal should or should not now be made;

(5) The Court particularly makes no finding as to whether or not this case is one of those in which appeals were authorized by law on March 8, 1934; and

(6) The order hereinafter made is made by the Court only because the petitioners insist that they are entitled to it as a matter of right and because the Court does not desire petitioners to be foreclosed of any right which they may have even though this Court be not advised of it, as it is not;

It is Ordered that for the reason specified in sub-paragraph (6), said appeal is allowed.

John P. Barnes
Judge

Entered this 29th day of
March, A. D. 1944.

Entered
Mar. 29,
1944

8 Thereafter on the 29th day of March, 1944, this Court entered the following order in words and figures, to-wit:

9 DISTRICT COURT OF THE UNITED STATES OF AMERICA
For the Northern District of Illinois
Eastern Division
* * * (Caption—D. C. No. 32168) * *

ORDER

This cause coming on to be heard on the petition of William R. Johnson praying that, for the reasons specified

in his Assignment of Errors heretofore filed in this Court on the 22nd day of January, 1944, he be permitted to take an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order of this Court denying his motion for a new trial, which order was entered on the 31st day of December, 1943; and it appears to the Court:

- (1) That petitioner insists that he is entitled to an order allowing an appeal as a matter of right;
- (2) That petitioner states to the Court no reason for the Court's now making an order allowing an appeal other than the reason set forth in sub-paragraph (1) hereof;
- (3) That this is the first motion of this kind that has been presented to the Court since the Rules of Practice and Procedure after Plea of Guilty, Verdict or Finding of Guilt in Criminal Cases, promulgated on March 7, 1934, became effective;
- (4) That this Court, not having been advised by counsel for the petitioner of any reason why an order allowing an appeal should now be made other than that set forth in sub-paragraph numbered (1) hereof, makes no finding as to whether or not an order allowing an appeal should or should not now be made;
- (5) The Court particularly makes no finding as to whether or not this case is one of those in which appeals were authorized by law on March 8, 1934; and
- (6) The order hereinafter made is made by the Court only because the petitioner insists that he is entitled to it as a matter of right and because the Court does not desire petitioner to be foreclosed of any right which he may have even though this Court be not advised of it, as it is not;

It is Ordered that for the reason specified in sub-paragraph (6) said appeal is allowed.

John P. Barnes.
Judge

Entered this 29th day of
March, A. D. 1944.

Entered
Nov. 28,
1944

11. On the 28th day of November, 1944, there was filed with the Clerk of this Court a certified copy of an order entered by the United States Circuit Court of Appeals on November 16, 1944, which said order was in words and figures, to-wit:

12. IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit

No. 7500

United States of America, Plaintiff,
vs.

William R. Johnson, Defendant.

No. 7501

United States of America, Plaintiff,
vs.

Jack Sommers, et al., Defendants.

ON MOTION TO REOPEN PROCEEDINGS ON
DEFENDANTS' MOTION FOR NEW TRIAL.

Whereas, at the October Term, 1944, of the Supreme Court of the United States, there was pending in that Court defendants' petition for writs of certiorari to this court, and whereas,

On October 10, 1944, the Clerk of the Supreme Court of the United States, by letter, informed defendants' counsel as follows:

"I am authorized by the Court to inform you that your motion for deferment of consideration of the petition for certiorari in the cases of Nos. 153-154, *Johnson, et al. v. The United States*, is granted. The Court will withhold consideration of the petition conditioned upon the prompt filing in the Circuit Court of Appeals for the Seventh Circuit of a motion to reopen proceedings on the motion for new trial and until the disposition of that motion by the Circuit Court of Appeals.

"This Court should be kept informed by counsel for the petitioners respecting the presentation to and the action taken thereon by the Circuit Court of Appeals upon the motion which affords the basis for deferment of the consideration of these cases in this Court.

Yours very sincerely,

Charles Elmore Cropley"

Whereas, on October 13, 1944, the defendants filed in this Court their Motion to reopen the proceedings in this court on their motion for a new trial, and whereas

On October 30, 1944, plaintiff filed its answer to the defendants' motion to reopen that issue, and on October 31, 1944, this court permitted the defendants to file a reply to plaintiff's answer to the defendants' motion, within three days from the date of service of the answer, and that reply was filed on November 4, 1944.

Therefore, this court now reopens the proceedings and vacates its order affirming the order of the District Court denying defendants' motion for a new trial.

The cause is, therefore remanded to the District Court, with directions to consider and dispose of the defendants' motion when and if filed in the District Court.

Thereupon the District Court is authorized and instructed to pass upon such amended motion for a new trial, and to certify its ruling to this court at an early date.

November 16, 1944

Before: Sparks, Major and Minton, Circuit Judges

A True Copy. Teste: (Seal)

Kenneth J. Carrick
Clerk

13 On the 28th day of November, 1944, this Court entered the following order in words and figures, to-wit:

14 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32,168)

ORDER.

This matter having come on this day to be heard on a certain order of the United States Circuit Court of Ap-

peals for the Seventh Circuit, rendered on the 16th day of November, 1944, a certified copy whereof has, on this 28th day of November, 1944, been filed in the office of the Clerk of this court, and which certified copy is in the words and figures following:

15 IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit

No. 7500

United States of America, *Plaintiff*,

vs.

William R. Johnson, *Defendant*.

No. 7501

United States of America, *Plaintiff*,

vs.

Jack Sommers, *et al.*, *Defendants*.

ON MOTION TO REOPEN PROCEEDINGS ON
DEFENDANTS' MOTION FOR NEW TRIAL.

Whereas, at the October Term, 1944, of the Supreme Court of the United States, there was pending in that Court defendants' petition for writs of certiorari to this court, and whereas,

On October 10, 1944, the Clerk of the Supreme Court of the United States, by letter, informed defendants' counsel as follows:

"I am authorized by the Court to inform you that your motion for deferment of consideration of the petition for certiorari in the cases of Nos. 153-154, *Johnson, et al. v. The United States*, is granted. The Court will withhold consideration of the petition conditioned upon the prompt filing in the Circuit Court of Appeals for the Seventh Circuit of a motion to reopen proceedings on the motion for new trial and

until the disposition of that motion by the Circuit Court of Appeals.

"This Court should be kept informed by counsel for the petitioners respecting the presentation to and the action taken thereon by the Circuit Court of Appeals upon the motion which affords the basis for deferment of the consideration of these cases in this Court.

Yours very sincerely,

Charles Elmore Cropley"

Whereas, on October 13, 1944, the defendants filed in this Court their motion to reopen the proceedings in this court on their motion for a new trial, and whereas:

On October 30, 1944, plaintiff filed its answer to the defendants' motion to reopen that issue, and on October 31, 1944, this court permitted the defendants to file a reply to plaintiff's answer to the defendants' motion, within three days from the date of service of the answer, and that reply was filed on November 4, 1944.

Therefore, this court now reopens the proceedings and vacates its order affirming the order of the District Court denying defendants' motion for a new trial.

The cause is therefore remanded to the District Court, with directions to consider and dispose of the defendants' motion when and if filed in the District Court.

Whereupon the District Court is authorized and instructed to pass upon such amended motion for a new trial, and to certify its ruling to this court at an early date. November 16, 1944.

Before: Sparks, Major and Minton, Circuit Judges
A True Copy Teste: (Seal)

Kenneth J. Carrick

Clerk

16 It is, on the court's motion Ordered that the defendants file in the office of the Clerk of this court, in writing, on or before the 4th day of December, 1944, such motion and supporting papers as the foregoing order of the United States Circuit Court of Appeals for the Seventh Circuit may authorize; that the United States file in the office of the Clerk of this court, in writing, on or before the 7th day of December, 1944, such answer

as the United States may deem necessary or advisable; that the defendants file in the office of the Clerk of this court, in writing, before 10 o'clock A.M. on the 11th day of December, 1944, such reply as they may deem necessary or advisable; and that the hearing upon such motion as may be filed pursuant to this order be set for 10 o'clock A.M. on the 11th day of December, 1944; and

Further Ordered that the Clerk of this court forthwith mail copies of this order to the attorneys for the respective parties.

Entered this 28th day of November, 1944.

(Sgd) *John P. Barnes*
Judge.

Filed
Nov. 30,
1944

17 Thereafter on the 30th day of November, 1944, there was filed by the defendants a notice of a motion for the production of documents, which said notice was in words and figures as follows, to-wit:

18 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

(Caption—No. 32168)

(Caption—No. 32168)

NOTICE.

To:

Hon. J. Albert Woll,
United States Attorney,
450 U. S. Court House,
Chicago, Illinois.

You Are Hereby Notified that the undersigned will on Thursday, November 30, 1944, at the hour of 10:00 o'clock A.M. before the Honorable John P. Barnes, one of the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division, in the Courthouse usually occupied by him in the Federal courthouse in Chicago, Illinois, or before such other judge as may be sitting in his stead, present a motion for an order

for the production of documents, a copy of which motion
is hereto attached for your convenience.

Homer Cummings
Homer Cummings
Counsel for Defendants, William R.
Johnson, Jack Sommers, James A.
Hartigan, William P. Kelly and
Stuart Solomon Brown.

William J. Dempsey
William J. Dempsey
Counsel for Defendant, William R.
Johnson.

19

Harold R. Schradzke
Harold R. Schradzke
Counsel for Defendants, Jack Som-
mers; James A. Hartigan, William
P. Kelly and Stuart Solomon Brown.

Received a copy of the above and foregoing Notice,
together with a copy of Motion therein referred to, this
29th day of November, 1944.

(Sgd) J. Albert Woll,
U. S. Attorney by E. Tillotson

Filed
Nov. 30.
1944

20 On the 30th day of November, 1944, there was filed by
the defendants a motion for the production of docu-
ments which said motion was in words and figures as fol-
lows, to-wit:

21 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32168)

MOTION FOR PRODUCTION OF DOCUMENTS.

Now come the defendants in the above entitled cause
and move the Court for an order requiring the United
States of America to produce and permit defendants to
inspect and to copy each of the following documents:

The income tax returns of Theodore Goldstein of 415 Aldine Avenue, Chicago, Illinois, for the years 1937, 1938, 1939 and 1940, and the amended income tax returns of the same person for the years 1941, 1942 and 1943; for further particulars the said 1937, 1938 and 1939 returns were filed on, to-wit, July 12, 1944, and the 1940 returns were filed on September 23, 1944; the said amended returns were filed on September 23, 1944; all of the above referred to income tax returns were filed in the Chicago office of the Collector of Internal Revenue.

22 The said defendants respectfully represent unto the Court that during, to-wit, the October, 1944, term of the Supreme Court of the United States, in the proceedings entitled "William R. Johnson, et al vs. The United States of America", on Petition for Writs of Certiorari to the United States Circuit Court of Appeals for the seventh Circuit, and being causes numbered 153 and 154, in the office of the Clerk of said Court, the Honorable Charles Fahy, Solicitor General, and the Honorable Samuel O. Clark, Jr., Assistant Attorney General, represented to said Court in a pleading entitled "Supplemental Memorandum for the United States in Opposition" that "Theodore Goldstein, son of William Goldstein, the Government witness, who petitioners contend committed perjury at their trial, has filed original income tax returns for the calendar years 1937 to 1940, inclusive, and amended returns for 1941 to 1943, inclusive, showing receipt of income during those years from the Albany Park Bank Building, one of the numerous investment properties regarding which Goldstein testified at the trial", and the said Solicitor General further delineated some of the material facts appearing on the face of the above referred to income tax returns.

These defendants further show to your Honor that they do not have possession, custody, control nor access to the originals of said returns for the purpose of presenting them to this Court in support of an amended motion for a new trial to be filed herein by order of this Court not later than December 4, 1944, but that on the contrary the United States of America has control, custody and possession thereof.

23 These defendants further respectfully represent that they cannot safely proceed to the filing of said amended motion for a new trial without access to the above referred

to returns, each and all of which returns are vital to the subject matter of said amended motion for a new trial. Each of the said returns is relevant to said amended motion for a new trial in that each of said returns discloses that William Goldstein, one of the witnesses who testified for the Government in the original trial herein, committed perjury on the trial of said cause and compounded such perjury by again committing perjury in this Court in affidavits filed by him in opposition to defendants' motion for a new trial under the proceedings recently had under Rule 2(3) of the Criminal Appeals Rules.

Wherefore, these defendants respectfully move your Honor to enter an order directing the United States of America and the Honorable Albert J. Woll, United States District Attorney for the Northern District of Illinois, Eastern Division, forthwith to produce or cause to be produced and to make available for the purpose of inspection and copying each of the said income tax returns above referred to, or in lieu thereof, to furnish to the defendants, within a short day and prior to December 4, 1944, certified copies of each of said income tax returns above referred to.

William R. Johnson, Jack Sommers,
James A. Hartigan, William P. Kelly
and Stuart Solomon Brown.

By
(Sgd) Homer Cummings
Homer Cummings

(Sgd) William J. Dempsey
William J. Dempsey

(Sgd) Harold R. Schradzke
Harold R. Schradzke
Their Attorneys.

24 State of Illinois)
County of Cook) ss:

I, Harold R. Schradzke, having been duly sworn on my oath, do say that in conjunction with the other counsel of record for the defendants herein, I prepared the above entitled motion, and that I know the contents thereof and that I know and do say that all facts and representations of fact therein stated are true and correct as therein set

forth, and I do further say that this motion is not made for delay or for any other reason except as therein stated.

(Sgd) Harold R. Schradzke

Subscribed and sworn to before me
this 29th day of November, 1944.

(Sgd) Martha Merkel
Notary Public.

Entered
Nov. 30,
1944

25. Thereafter on the 30th day of November, 1944, this Court entered an order for the production of documents and the filing of certified copies thereof in the Clerk's office, which said order was in words and figures as follows, to-wit:

26. IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois.
Eastern Division

(Caption—No. 32168)

ORDER.

This matter having come on before me to be heard upon the motion of the defendants herein for an order upon the United States of America to produce certain documents for inspection and copying, or in lieu thereof to produce certified copies of said documents, and due notice of said motion having been given, and the parties, by their respective counsel, having appeared before me in open Court, and the Court being fully advised in the premises,

Now, Therefore, It Is Ordered:

1. That the United States of America immediately make available to counsel of record for the defendants for the purpose of inspection and copying the following documents: The income tax returns of Theodore Goldstein of 415 Aldine Avenue, Chicago, Illinois, for the years 1937, 1938, 1939 and 1940, and the amended income tax returns of the same person for the years 1941, 1942 and 1943; the said 1937, 1938 and 1939 returns were filed on, to-wit, July 12, 1944, and the 1940 return was filed on September 23, 1944, and the said amended returns were filed on September 23, 1944.

27 2. That this inspection shall be made available to counsel for the defendants in the Office of the Commissioner of Internal Revenue in Washington, D. C. not later than 12:00 o'clock noon, Eastern War Time, Saturday, December 2, 1944; and the foregoing, certified copies of each of said returns shall be filed with the Clerk of this Court on or before 10:00 o'clock A.M., Central War Time, December 2, 1944, which said certified copies shall be open to the inspection and copying of the defendants' counsel and to the United States Attorney.

3. The United States District Attorney in and for this District is hereby ordered to cause the said returns to be made available to the defendants, as hereinabove set forth.

Enter:

(Sgd) Barnes
Judge

Dated: November 30, 1944.

28 The defendants on the 4th day of December, 1944, filed a notice of an amended motion for a new trial, which said notice was in words and figures as follows, to-wit:

29 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

(Caption—No. 32,168)

NOTICE.

To:

Hon. J. Albert Woll,
United States Attorney,
450 U. S. Court House,
Chicago, Illinois.

You Are Hereby Notified that the defendants in the above entitled cause, are this day filing in the Office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, in his office in the United States Court House in Chicago, Illinois, an "Amended Motion for New Trial", a copy of which said

Filed
Dec. 4
1944

motion together with true and correct copies of each of the exhibits thereto attached, is herewith delivered to you for your convenience.

Homer Cummings,
William J. Dempsey and
Harold R. Schradzke,

Attorneys for the above named defendants.

By (Sgd) *Harold R. Schradzke,*
Harold R. Schradzke.

Received a copy of the within referred to motion and exhibits thereto attached this 4th day of December, A. D. 1944.

J. Albert Woll,
United States District Attorney.

By E. Tilleston.

Filed
Dec. 4,
1944

30 The defendants on the 4th day of December, 1944, filed an amended motion for a new trial and exhibits attached to and forming part of said amended motion for a new trial, which said motion and which said exhibits were in words and figures as follows, to-wit:

31 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division.

(Caption—No. 32,168)

AMENDED MOTION FOR NEW TRIAL.

Come now the defendants in the above-entitled cases by their undersigned attorneys and move this Court to grant a new trial therein. In support of this motion, it is shown that:

1. Shortly after the decision of the Supreme Court in these cases (reversing the judgment of the Court of Appeals which set aside the convictions of the defendants herein on the ground that the indictment out of which the cases arose was invalid), defendants filed in the Supreme Court (as an exhibit to a motion for stay of mandate) a proposed motion for remand of these cases to the Court

of Appeals so that it might, pursuant to Rule 2(3) of the Criminal Appeals Rules, remand these cases to this Court for the purpose of permitting defendants to file a motion for a new trial. On the basis of this motion the mandate of the Supreme Court was issued without prejudice to the Court of Appeals entertaining a motion for remand under Rule 2(3), and pursuant to such a motion that Court remanded these cases to this Court so that a motion for a new trial might be filed.

2. Motion for new trial pursuant to remand granted by the Circuit Court of Appeals was duly filed in this Court and after filing of answer, reply, and briefs, and the hearing of argument, was denied by this Court by order entered December 31, 1943.

3. Said motion alleged and defendants re-allege that:

Defendants through diligent endeavor have uncovered evidence not available or accessible to them at the time of the trial; which demonstrates conclusively that William Goldstein, a principal Government witness in the trial of these cases testified falsely on material matters to the prejudice of all of the defendants.

Goldstein's uncorroborated testimony was the sole basis upon which the Government improperly charged defendant Johnson with some \$470,000 of personal expenditures and was of vital importance to the Government's case against both Johnson and the other defendants. In addition, Goldstein's testimony as to Johnson's sole ownership of certain properties was relied upon by the Government to supply vital links in the chain of circumstantial evidence upon which it successfully supported in the Supreme Court the conclusion that various gambling houses owned and operated by the co-defendants constituted a single unified operation and that Johnson was the owner of all the houses. Goldstein's testimony was directly contradicted by Johnson. If believed by the jury,

* Original or photostat or certified copies of all evidence offered in support of said motion were by order of this Court filed with the Clerk of this Court. All of such documents are hereby incorporated herein by this reference.

*The printed record on appeal from the denial of defendants' motion for new trial is submitted herewith as Exhibit A and by this reference is made a part hereof as though fully set out herein.

Goldstein's testimony justified the jury in disregarding Johnson's testimony not only with respect to the specific matters testified to by each, but in all other respects. In addition, if the jury believed Goldstein's testimony (and it has been the Government's position in the Court of Appeals and in the Supreme Court that that assumption must be indulged) then the jury was at liberty to disregard the testimony of all other witnesses whose statements in any manner contradicted Goldstein's. Goldstein's testimony, therefore, was not merely material to the case but its effect upon the jury was incalculable, and, being false, was so prejudicial to the defendants that only by a new trial can they possibly obtain justice.

The evidence uncovered by defendants in addition to proving the perjury of a principal Government witness, establishes the truth of the defendant Johnson's testimony as to the ownership of various properties, the sole ownership of which in Johnson has been relied upon by the Government to support both of the theories upon which the Government obtained (and sustained) the convictions of the defendants. The newly discovered evidence not merely demonstrates that the Government's principal witness committed perjury as to material matters, but also proves the truth of Johnson's testimony.

The evidence in support of this motion, consisting of affidavits of responsible and disinterested persons and other material, if true in substance and in fact, as we respectfully represent that it is, proves that Goldstein committed perjury as to facts which were unquestionably material to the decision of these cases. From this evidence the conclusion is inescapable that Goldstein wilfully gave false testimony at the trial of these cases which was highly prejudicial to all of the defendants.

Conclusive proof that Goldstein wilfully and knowingly gave false testimony on material points in these cases first came into defendants' possession shortly after the Supreme Court of the United States handed down its decision of June 7, 1943. Defendant Johnson knew at the time it was given that Goldstein's testimony was deliberate perjury, but did not then have complete proof of such perjury. Defendants

immediately commenced (and have prosecuted vigorously since) an investigation of the subjects of Goldstein's testimony and eventually obtained certain affidavits which justified referring the matter to the Department of Justice for its investigation. In the summer of 1942 these affidavits were turned over to the United States Attorney for the Northern District of Illinois, whose statutory duty (28 U.S.C. 485) is to prosecute in his District all delinquents for crimes and offenses cognizable under the authority of the United States. He was requested to investigate the facts alleged in the affidavits and to take such steps as would be proper as the result of that investigation. No such investigation was made by the Government at that time. The Government pursuant to request made of the Attorney General by counsel for defendants on June 23, 1943, did undertake an investigation. The results of this investigation are disclosed in the affidavits and other exhibits filed by the Government in the Court of Appeals (see Part II, Appendix to brief in support of this motion). The facts uncovered by this investigation as disclosed by the Government to the Court of Appeals, strongly corroborate defendants' charge that Goldstein testified falsely at the trial of these cases.

In view of the foregoing, and particularly since there can be no doubt that material testimony given by a principal Government witness in this case was false; that without it the jury not only *might* but probably would have reached a different conclusion; that the defendants were taken by surprise when the false testimony was given, and were unable to meet it at the trial; and that proof of the falsity of the testimony was promptly called to the attention of the Government upon its being obtained by defendants; it is respectfully submitted that justice requires a new trial in these cases on the basis of defendants' newly discovered evidence of Goldstein's perjury.

4. This Court denied defendants' motion on the ground that defendants failed to prove that Goldstein had testified falsely at the original trial of these cases. The Circuit Court of Appeals affirmed this Court's denial of defendants' motion on the ground that, defendants' evidence having been found insufficient to prove Goldstein

committed perjury, the rule of *Larrison v. United States*, 24 F. 2d. 82, was inapplicable, and the question of false testimony being thus eliminated, this Court's rejection of all the evidence as being "merely cumulative" or 34 "merely impeaching" was not error as a matter of law.

5. Defendants filed a petition for certiorari in the Supreme Court of the United States requesting review of the judgment of the Court of Appeals. While this petition was pending, the Solicitor General of the United States formally advised the Supreme Court that William Goldstein had procured and filed certain income tax returns on behalf of his son, Theodore Goldstein, indicating complete equitable ownership, as well as legal title, in Theodore Goldstein of the Albany Park Bank Building from the date of its purchase by William Goldstein. Defendants' request to the Supreme Court that copies of the Theodore Goldstein returns be filed and made available to them was denied on the ground that such returns were not a part of the record in the cause. Defendants thereupon filed a motion in the Supreme Court requesting that Court to defer action on the petition for certiorari until appropriate motion could be filed in the Circuit Court of Appeals to reopen the record in the case. This motion was granted by the Supreme Court and thereafter defendants filed in the Court of Appeals a motion to reopen the cause and for leave to file with this Court an amended motion for new trial, which motion was granted on the 16th day of November, 1944. A certified copy of the order granting the same was filed in the Office of the Clerk of this Court on the 28th day of November, 1944.* This Court on Thursday, November 30, on defendants' motion entered an order requiring the Government to file with the Clerk of this Court copies of the Theodore Goldstein returns which returns, now filed in the Office of the Clerk

* Filed herewith are Exhibit B, defendants' motion in the Circuit Court of Appeals to reopen proceedings on the motion for new trial which contains as exhibits the Solicitor General's notification to the Supreme Court concerning the Theodore Goldstein tax returns and defendants' motion for deferment of consideration of their petitions for certiorari; Exhibit B-1, consisting of the Government's answer to defendants' motion in the Court of Appeals; and Exhibit B-2, consisting of defendants' reply to the Government's answer to said motion.

of this Court, are by reference incorporated herein. For convenience of the Court, there are filed herewith as Exhibits C-1, 2, 3, 4, 5, 6 and 7, photostat copies of such returns supplied to defendants' counsel by the Department of Justice, pursuant to this Court's order.

35. The returns of Theodore Goldstein procured and filed by William Goldstein demonstrate not merely that William Goldstein testified falsely at the trial of these cases with respect to the purchase of the Albany Park Bank Building, but demonstrate as well that his affidavits filed by the Government in opposition to defendants' motion for remand of these cases in the Court of Appeals and again relied upon by the Government in this Court in opposition to defendants' motion for new trial, contain deliberately false statements by William Goldstein, as more particularly set forth in Paragraphs numbered 4, 5, 6, 7, and 8 appearing on pages 3, 4, 5, 6, 7 and ending on the third line of page 8 in defendants' "Motion to Reopen Proceedings on Defendants' Motion for New Trial" hereto attached and marked Exhibit B and by this reference made part hereof.

6. Attached hereto as Exhibit D is an affidavit of Edward Wait, which shows that the litigation referred to in the affidavit of Max Lidschen, relied upon by the Government, and accepted by this Court on defendants' motion for new trial as corroborating Goldstein and contradicting the affidavit of Frank T. Fowler (no. 53) submitted by the defendants, relates to transactions which had their inception and conclusion some four months or more after Fowler severed his connection with the Waukegan Post. Lidschen's affidavit filed by the Government proves the falsity of Goldstein's attempt by affidavit to rebut Fowler's sworn statement that certain bills owing to the Waukegan Post by the Bon Air were collected by Goldstein through Skidmore.

7. There are submitted herein and made a part hereof as Exhibits E-1 and E-2 an affidavit and lease of Frank Sampson, tenant of the Albany Park Bank Building, showing that after this Court's denial of defendants' motion for new trial, William Goldstein as agent for his son, Theodore Goldstein, and Theodore Goldstein as owner of the Albany Park Bank Building, entered into a lease agreement with Frank Sampson for a ten-year occupancy
36 of the Albany Park Bank Building.

Wherefore, in view of the fact that this Court denied defendants' motion for new trial and its denial was sustained by the Circuit Court of Appeals on the ground that defendants had failed to prove Goldstein testified falsely, and that these proceedings have been reopened on the Government's admission of the procuring and filing of tax returns by William Goldstein, signed and sworn to, of his son, Theodore Goldstein, which show not only that Goldstein testified falsely at the trial of these cases but, in addition, executed false and perjured affidavits submitted by the Government in opposition to defendants' motion for new trial and relied upon by this court in denying said motion, and in view of the fact that without Goldstein's false testimony, the jury *might* have reached a different result at the trial, it is respectfully prayed that this Court grant this amended motion for a new trial in order that defendants may have a fair trial according to law, without taint of fraud or false testimony.

(Sgd.) *William J. Dempsey,*
William J. Dempsey,
Attorney for Defendant,
William R. Johnson.

(Sgd.) *Harold R. Schradzke,*
Harold R. Schradzke,
Attorney for Defendants,
Jack Sommers, James A.
Hartigan, William P. Kelly
and Stuart Solomon Brown.

(Sgd.) *Homer Cummings,*
Homer Cummings,
Attorney for Defendants,
William R. Johnson, Jack
Sommers, James A. Hartigan,
William P. Kelly
and Stuart Solomon Brown.

37 City of Washington, } ss:
District of Columbia, }

William J. Dempsey, attorney for defendant William R. Johnson, being duly sworn, upon his oath, deposes and

says that he has read the foregoing amended motion for a new trial and that the facts stated therein are true; that the said motion is made in good faith and not for the purpose of delay; that in his opinion the said motion presents a meritorious basis requiring a new trial in these cases and that a new trial is necessary in the interest of justice.

(Sgd.) *William J. Dempsey,*
William J. Dempsey.

Subscribed and sworn to before me this 2nd day of December, 1944.

(Sgd.) *Joyce Williams,*
Notary Public.

County of Cook, } ss:
State of Illinois }

Harold R. Schradzke, attorney for defendants Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, being duly sworn upon his oath deposes and says that he has read the foregoing amended motion for a new trial and that the facts stated therein are true; that the said motion is made in good faith and not for any purpose of delay; that in his opinion the said motion presents a meritorious and proper basis requiring new trial in these cases and that a new trial is necessary in the interest of justice.

(Sgd.) *Harold R. Schradzke,*
Harold R. Schradzke.

Subscribed and sworn to before me this 4th day of December, 1944.

(Sgd.) *Martha Markel,*
Notary Public.

38. City of Washington, } ss:
District of Columbia, }

Homer Cummings, attorney for defendants William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, being duly sworn upon his oath, deposes and says that he has read the foregoing amended motion for a new trial and that the facts stated therein are true; that the said motion is made in good faith

and not for the purpose of delay; that in his opinion the said motion presents a meritorious basis requiring a new trial in these cases and that a new trial is necessary in the interest of justice.

(Sgd.) *Homer Cummings,*
Homer Cummings.

Subscribed and sworn to before me this 2nd day of December, 1944.

(Sgd.) *Joyce Williams,*
Notary Public.

39 • IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
• • • (Caption—No. 32168 • •

EXHIBITS ATTACHED TO AND FORMING PART OF
AMENDED MOTION FOR A NEW TRIAL.*

INDEX OF EXHIBITS.

- Exhibit A—Transcript of record on appeal from the denial of Defendants' Motion for a New Trial.
Exhibit B—Defendants' Motion in the Circuit Court of Appeals to Reopen Proceedings on the Defendants' Motion for a New Trial.
Exhibit B-1—Government's Answer to Defendants' Motion to Reopen Proceedings on Motion for a New Trial.
Exhibit B-2—Defendants' Reply to Government's Answer to said Motion.
Exhibit C-1—Photostatic copy of United States Individual Income Tax Return for the year 1937 of Theodore Goldstein.

* The exhibits attached to and forming part of the Defendants' Amended Motion for a New Trial are filed in this folder rather than by binding the exhibits together, for the Court's convenience in referring to the said exhibits and so as not to destroy any portion of the said exhibits.

Exhibit C-2—Photostatic copy of United States Individual Income Tax Return for the year 1938 of Theodore Goldstein.

Exhibit C-3—Photostatic copy of United States Individual Income Tax Return for the year 1939 of Theodore Goldstein.

Exhibit C-4—Photostatic copy of United States Individual Income Tax Return for the year 1940 of Theodore Goldstein.

Exhibit C-5—Photostatic copy of United States Individual Income Tax Return for the year 1941 of Theodore Goldstein.

Exhibit C-6—Photostatic copy of United States Individual Income Tax Return for the year 1942 of Theodore Goldstein.

Exhibit C-7—Photostatic copy of United States Individual Income Tax Return for the year 1943 of Theodore Goldstein.

Exhibit D—Affidavit of Edward Wait.

Exhibit E-1—Affidavit of Frank Sampson.

Exhibit E-2—Lease dated January 3, 1944, between Theodore Goldstein and Hines Realty & Construction Co. (Frank Sampson). Letter dated July 13, 1944, from William Goldstein as duly authorized agent of Theodore Goldstein to Hines Realty & Construction Co., attention Mr. Frank Sampson, extending the said lease.

(EXHIBIT A, consisting of the Printed Record filed on March 7, 1944, in the United States Circuit Court of Appeals on the appeal from the Defendants' Original Motion for a New Trial, is not reprinted here.)

(EXHIBIT B, consisting of Defendants' Motion in the United States Circuit Court of Appeals to Reopen Proceedings on the Defendants' Motion for New Trial is not reprinted here.)

EXHIBIT B-1.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit

No. 7500.

United States of America,

Plaintiff,

vs.

William R. Johnson,

Defendant.

No. 7501.

United States of America,

Plaintiff,

vs.

Jack Sommers, James A. Hartigan, William P. Kelly
and Stuart Solomon Brown,

Defendants.

ANSWER TO DEFENDANTS' MOTION TO REOPEN
PROCEEDINGS ON MOTION FOR NEW TRIAL.

This case is now before this Court for the fourth time. The defendants were convicted of income tax evasion in the District Court for the Northern District of Illinois on October 23, 1940. This Court reversed the convictions principally on the ground that the indictment was returned by an illegally constituted Grand Jury. The Supreme Court after granting certiorari sustained the convictions, reversed and remanded the cases to this Court. Defendants then filed a motion in this Court for remand of the cases to the District Court for consideration of a motion for new trial based on newly discovered evidence. The motion for remand was granted. The motion for new trial subsequently filed in the District Court was based upon the claim that William Goldstein, a Government witness,

had perjured himself at defendants' trial. The motion was denied by the District Court and the District Court's judgment was affirmed by this Court on appeal. Petition for a writ of certiorari was then filed in the Supreme Court. The day subsequent to the convening of the 1944 term of that Court, that is on October 3, 1944, the Government filed a supplemental memorandum in opposition, advising the Supreme Court of certain new facts not contained in the record. This memorandum was filed at defendants' request, although we did not consider that the facts disclosed should affect the result. On October 6, 1944, the defendants filed a motion in the Supreme Court seeking to postpone determination of their petition for certiorari until disposition was made by this Court of the motion now before it, which defendants represented to the Supreme Court they intended to file. The Supreme Court thereupon temporarily postponed action on the petition for certiorari until the filing and disposition of the present motion. This motion is in effect a motion for remand of the cases to the District Court pursuant to Rule 2(3) of the Criminal Appeals Rules (Following 18 U.S.C. 688).

As grounds for their motion defendants rely entirely upon the fact, disclosed in our supplemental memorandum in the Supreme Court, that Theodore Goldstein, William Goldstein's son, recently filed income tax returns reporting income from the Albany Park Bank Building, one of the investment properties as to which William Goldstein testified at the trial. This fact, defendants contend, demonstrates that William Goldstein committed perjury at defendants' trial. We submit that the facts do not support this conclusion and that a second remand of the cases is unwarranted.

Goldstein's trial testimony with respect to the Albany Park Bank Building consisted only of statements that he purchased the building at Johnson's request with money given to him by Johnson, that title was taken in the name of his son, Theodore Goldstein, and that a quitclaim deed to the property was subsequently delivered to Johnson.

The circumstances under which the returns were filed, as well as the amounts of tax and years involved, are reported in our supplemental memorandum which is made a part of and forms the sole basis for defendants' motion. This spring the Chicago office of the Bureau of Internal Revenue received an anonymous telephone call to the effect that no

one was paying income tax on the rent from the Albany Park Bank Building, supposedly being collected by William Goldstein as agent for his son. A zone Deputy Collector of Internal Revenue was instructed to investigate the matter and approached Goldstein, telling him his son was liable for income tax on the income from the building. Goldstein protested and in doing so reaffirmed his trial testimony, stating that his son was only the record title holder, not the actual owner, of the building. In addition, he reiterated a statement he made in an affidavit filed on defendants' motion for new trial—that title to the building had been placed in his son's name because Johnson had an idea of opening a bank in the building and did not want to disclose the identity of the owners to the people in the neighborhood. The agent was also informed that corporate returns respecting the property had been filed by the Albany Park Safe Deposit Vault Company for the years 1937, 1938 and 1939—another fact which Goldstein had stated by affidavit filed on defendants' motion for new trial. The Deputy Collector nevertheless insisted that Theodore Goldstein, as record title owner, was taxable on the income from the building. Goldstein protested but finally agreed to the filing of the returns, saying that he did so in order that the matter might be closed. Goldstein is reported also to have told the agent that he did not know who actually owned the building or whether the money given him to purchase it was Johnson's or Skidmore's. Neither statement is inconsistent with his trial testimony. The defendants are therefore in the position of urging that the filing of the returns by Theodore Goldstein proves that William Goldstein committed perjury at their trial when, as a matter of fact, their own motion, showing the circumstances under which the returns were filed strengthens, rather than weakens, the conclusion, once affirmed by this Court, that Goldstein did not testify falsely at defendants' trial.

The filing of the returns by Goldstein's son is of itself of no consequence. They were filed at the insistence of the Deputy Collector that Theodore Goldstein was liable for the tax as holder of the record title. The question whether Theodore Goldstein is or is not liable for the tax is one which may be the subject of future judicial determination, should Theodore Goldstein decide to follow the prescribed procedure, but that question has no relevancy here.

The facts now relied upon by defendants do not in any way tend to show that William Goldstein cagimitted perjury at defendants' trial and add nothing to defendants' contrary contention once rejected by this court. The proceedings in these cases have already been in the courts for more than four years since the jury returned its verdict of conviction. The instant motion furnishes no valid reason for their further prolongation by action of this Court. The motion should therefore be denied.

Respectfully submitted,

Samuel O. Clark, Jr.,
Assistant Attorney General

J. Albert Woll,

United States Attorney

October 30, 1944.

EXHIBIT B-2.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

No. 7500.

United States of America,

Plaintiff,

vs.

William R. Johnson,

Defendant.

No. 7501.

United States of America,

Plaintiff,

vs.

Jack Sommers, James A. Hartigan, William P. Kelly
and Stuart Solomon Brown.

Defendants.

REPLY TO GOVERNMENT'S ANSWER TO DEFENDANTS' MOTION TO REOPEN PROCEEDINGS.

The Government relies in its Answer to Defendants' Motion upon the fact that "this case is now before this Court for the fourth time" (Answer, p. 1) and "the proceedings in these cases have already been in the courts for

more than four years since the jury returned its verdict of conviction". (Answer, p. 5). The importance of speedy trials* and expeditious appellate consideration in criminal cases is unquestioned. We do not conceive, however, that this Court has ever placed speedy termination of litigation above justice to refuse consideration of the merits of any point properly raised in a criminal appeal. Certainly it would be contrary to the genius of our whole judicial system if, as the Government's motion for time in which to answer suggested, the courts are to substitute what is "expedient" for what is right. Sufficient answer to the Government's contention is that the Supreme Court, despite the fact that it had before it everything that the Government has presented here², took the opposite view in deferring consideration of the pending Petition for Certiorari.

Motion is not under Rule 2(3).—The Government apparently labors under a basic misconception concerning the nature and purpose of the instant Motion. We are not asking this Court for a remand pursuant to Rule 2(3) of the Criminal Appeals Rules, which is in effect an authorization to the District Court to entertain a motion for a new trial. On the contrary, we are requesting that the proceedings on the motion for new trial filed pursuant to this Court's Order of Remand of October 13, 1943, be reopened. As the Supreme Court has held (*Duke Power Co. v. Greenwood County*, 299 U.S. 259, 267);

"If it appears that supervening facts require a retrial in the light of a changed situation, the appropriate action of the appellate court is to vacate the decree which has been entered and revest the court below with jurisdiction of the cause to the end that issues may be properly framed and the retrial had."

Retrotrial of the motion for new trial is obviously required in the light of the Goldstein tax returns. These returns require a modification of the trial court's conclusion that the evidence offered by the Defendants on the motion for new trial—

"merely shows that in 1941 Ted Goldstein continued to act for whomsoever he represented; and adds nothing to what was before the jury" (R. 512).

* The Government may disagree on this as evidenced by its failure up to this date to bring Goldstein to trial on his perjury indictment returned in March, 1940.

² The Government's Answer in this Court is a patent paraphrase of the Solicitor General's "Supplemental Memorandum in Opposition". See Exhibit A of Defendants' Motion, pp. 11-14.

The returns demonstrate incontrovertibly that in 1941 and continuously from the date of its purchase by William Goldstein to the present Theodore Goldstein was acting and has acted for himself alone in all matters relative to the Albany Park Bank Building. They also demonstrate that in his actions in connection with the property William Goldstein was acting for his son, Theodore, and not for Johnson. It plainly cannot be contended that these returns add "nothing to what was before the jury."

The nature of the evidence relied upon requires its consideration in relation to the evidence earlier submitted on the motion for new trial. Consideration of all the evidence then submitted, together with the returns of Theodore Goldstein filed by his father, William Goldstein, is essential in order that the trial court may determine the perjury of the Government's witness and as well evaluate the degree to which the testimony and affidavits of that witness have imposed upon the trial court and prostituted the judicial process. For this reason Defendants seek to have the case on the earlier motion for new trial reopened in the court below.

The Answer of the Government does not purport to meet the basic ground of our Motion.—The Government does not deny that the returns filed by Goldstein on behalf of his son demonstrate the falsity of Goldstein's affidavit on the motion for new trial. Indeed, the Government carefully omits even to mention the affidavit of Goldstein that the rental moneys from this property were—

"being held by me until such time as I am released from the Internal Revenue Department which served me with a lien to hold all funds and property belonging to William R. Johnson. * * * Theodore W. Goldstein holds title to the building in trust" (R. 252-253).

Neither does the Government deny that the Goldstein returns are irreconcilable with Goldstein's trial testimony that he had purchased the property for Johnson and that a quit-claim deed had been delivered to Johnson by his son, Theodore³.

³ It should be noted that the Government in its purported paraphrase of Goldstein's trial testimony (Answer, p. 3) significantly omits Goldstein's testimony (R. 517-518)—

"I was requested by Mr. Johnson to go out there and purchase the building for him * * *." (Emphasis supplied)

The Government also ignores the trial court's statement (R. 512):

"Goldstein testified on the trial that he purchased the property for Johnson * * *." (Emphasis supplied)

The Government does not deny that the application of Theodore Goldstein's personal exemption and the exemption personal to him as a member of the armed forces to reduce his tax liability on the rental income is an assertion under penal sanction of his unqualified ownership of such income. Nor does the Government deny that the taking of deductions for depreciation on the property against not only the rental income but income from other sources by Theodore Goldstein is an assertion under penal sanction of complete ownership of the property by him.

The Government's avoidance is irrelevant and without support.—The Government's Answer does not even attempt to reconcile the statements made in the returns with the testimony of Goldstein at the trial or with the affidavits of Goldstein on the motion for new trial. It seeks to divert attention from this fatal omission by elaborate attempt to show that alleged oral statements by Goldstein at the time of filing the returns were not inconsistent with his trial testimony (Answer, pp. 3-4).

The alleged "circumstances", including alleged oral statements by Goldstein at the time of the filing, upon which the Government so strongly relies and is so solicitous to reconcile with his earlier testimony are but mere unsupported allegations of hearsay by counsel. The necessity of proof in any matter in controversy, not admitted by the other side cannot be escaped through the device of a hearsay allegation in pleading.

The attempt of the Government to create the impression that the returns were filed as the result of duress on the part of a Government agent is absurd on its face. The alleged duress is relevant only if the Government is by implication asking this Court to regard the returns as false. Under this view Goldstein subjected himself to severe criminal penalty by aiding and counseling the filing of the returns knowing them to be false. In short, in order to avoid the conclusion by this Court from such returns that Goldstein testified falsely at the trial and in his affidavit on the motion for new trial, the Government now asks this court to hold that Goldstein suborned perjury on the part of his son in the making of the returns. But—if it were true—as Goldstein testified at the trial, that Johnson, not Theodore Goldstein, was the real party in interest in the property, and—if it were true—as Goldstein swore in his affidavit, that he was holding the rents under the lien for Johnson's taxes, then obviously no insistence by a tax collector could have compelled Goldstein to procure and

file false returns and so subject himself and his son to prosecution.' For any demand for a tax accounting on the rents, however, insistent, could obviously have been met without contradiction on the part of the Government by his surrender of the rents as Johnson's pursuant to the alleged lien. The Government's whole argument, based as it is on hearsay allegation as to "circumstance", is without support in fact or foundation in reason.

Conclusion.

The Government does not even advert in its Answer to the irreconcilability of Goldstein's affidavit on the motion for new trial with the returns currently filed by him. Neither is Goldstein's testimony, both at the trial and by affidavit, that Theodore held merely the empty record title attempted to be reconciled with the unqualified assertion in the returns of complete beneficial ownership in Theodore from the date of purchase in July, 1937. Nor does the Government claim that the denial of the motion for new trial can be supported in the face of proof that Goldstein did testify falsely. The inescapable conclusion is that the defendants' conviction, the trial court's denial of the motion for new trial, and this Court's affirmance thereof alike rest upon a false and fraudulent record.

It is submitted that the judgment affirming the order denying motion for new trial and the order denying the new trial, should be vacated and the cause remanded, with directions that the parties be permitted to amend their pleadings on the motion for new trial, and for retrial of the issues thus presented.

Respectfully,

Homer Cummings,

Counsel for Defendants, William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly, and Stuart Solomon Brown.

William J. Dempsey,

Counsel for Defendant, William R. Johnson,

Harold R. Schradzke,

Counsel for Defendants, Jack Sommers, William P. Kelly, James A. Hartigan, and Stuart Solomon Brown.

DISTRICT OF COLUMBIA, ss:

I, Alice H. White, being duly sworn on oath depose and say that copy of the Government's "Answer to Defendants' Motion to Reopen Proceedings on Motion for New Trial" was received in the office of Homer Cummings, Attorney for Defendants, William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly, and Stuart Solomon Brown, at ten o'clock a.m. on the first day of November, 1944. I am employed in the office of Homer Cummings, Attorney for Defendants, William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly, and Stuart Solomon Brown, and I know of my own knowledge that copy of the Government's "Answer to Defendants' Motion to Reopen Proceedings on Motion for New Trial" was received via United States mails at ten o'clock a.m. on the morning of November 1, 1944.

Subscribed and sworn to before me this day of November, 1944.

Notary Public, D.C.

DISTRICT OF COLUMBIA, ss:

I, Alice H. White, being duly sworn on oath depose and say that I deposited copy of Defendants' Reply to Government's Answer to Defendants' Motion to Reopen Proceedings" in the United States Mails, with proper postage thereon and properly marked for air mail and special delivery, addressed to the Honorable J. Albert Woll, United States Attorney, Federal Building, Chicago, Illinois, at 9:00 p.m. on the third day of November, 1944.

Subscribed and sworn to before me this day of November, 1944.

Notary Public, D.C.

DEFINING
UNITED STATES

Ex-C-1

1937 INDIVIDUAL INCOME TAX RETURN 1937

Do not write in this space	
(Auditor's Stamp)	
3/21/68	

Treasury Department (FORM 1040) Internal Revenue Service

FOR NET INCOMES FROM SALARIES, WAGES, INTEREST, AND DIVIDENDS OF MORE THAN \$5,000, AND INCOMES FROM OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1937 or Fiscal Year beginning _____, 1937, and ended _____, 1938

(File this return not later than the 15th day of the third month following the close of the taxable year)

PRINT NAME AND ADDRESS (PLAINLY) (See Instruction 10)

THEODORE GOLDSTEIN

415 ALDINE AVENUE

CHICAGO

IL.

Do not use these spaces

Mr.
Miss
Spouse
Domestic

(Cocher's Stamp)

Cash—Check—M.O.

Post Payment

INCOME

1. Salaries and other compensation for personal services (from Schedule A).
2. Dividends from domestic and foreign corporations.
3. Interest on bank deposits, notes, mortgages, etc.
4. Interest on corporation bonds.
5. Taxable interest on Government obligations, etc. (from Schedule B).
6. Income (or loss) from partnerships, syndicates, pools, etc. (furnish name and address):

7. Income from fiduciaries (furnish name and address):

8. Rents and royalties (from Schedule C).
9. Income (or loss) from business or profession (from Schedule D).
10. Gain (or loss) from sale or exchange of property (from Schedule F).
11. Other income (state nature; use separate schedule if necessary).
12. Total income in items 1 to 11 (enter nontaxable income in Schedule H). 1046.80

DEDUCTIONS

13. Contributions (explain in Schedule G).
14. Interest (explain in Schedule G).
15. Taxes (explain in Schedule G).
16. Losses by fire, storm, etc. (explain in Schedule G).
17. Bad debts (explain in Schedule G).
18. Other deductions authorized by law (explain in Schedule G).
19. Total deductions in items 13 to 18. 1046.80
20. Net income (item 12 minus item 19). 1046.80

COMPUTATION OF TAX

21. Net income (item 20 above).	1046.80	28. Normal tax (4% of item 27).	—
22. Less: Personal exemption (from Schedule I). 1000	1046.80	29. Surtax on item 24 (see Instruction 29).	—
23. Credit for dependents (from Schedule I). —	1046.80	30. Total tax (item 28 plus item 29).	—
24. Balance (surtax net income). —	1046.80	31. Less: Income tax paid at source.	—
25. Less: Interest on Government obligations (item 5). —	1046.80	32. Income tax paid to a foreign country or U.S. possession.	—
26. Earned income credit (from Schedule J). —	1046.80	33. Balance of tax (item 30 minus items 31 and 32). 1046.80	
27. Balance subject to normal tax.	1046.80		

NOTE.—One form marked "1040" is sufficient for each individual filing this original return (it will be

Page 2

Schedule A.—INCOME FROM SALARIES AND OTHER COMPENSATION FOR PERSONAL SERVICES.

EMPLOYMENT SERVICES. (See Instruction 1)			
1. Name and Address of Employer or Master of Service	2. Amount	3. Expenses (Fees)	4. Amount

Total column 2 minus total column 4 (entry as item 1, page 1).

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC.

1. Obligations or Investments	2. Amounts Owed at End of Year	3. Interest Received or Accrued During the Year	4. Interest Received From Treasuries	5. Interest or Amount in Excess of Treasuries
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions.			All	
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended.			All	
(c) Obligations of United States issued on or before September 1, 1917.			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness.			All	
(e) U. S. Savings Bonds and Treasury Bonds.			All	
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above).				
(g) Total (enter total of column 5 as item 5, page 1)				

(g) Total (enter total of column 9 as item 3, page 1)

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 6.)

ESTATE REENTS AND ROYALTIES. (See Instruction 5)					
1. Kind of Property	2. Amount	3. Depreciation (Estimate in Schedule D)	4. Expenses	5. Other Expenses (Estimate below)	6. Net Profit (Estimate in Item 5, less 4 & 5, if any)
1 story brick 3 1/2 fl. over one fl.	\$15,468.80	500 -	-	-	\$ 10,468.80

**Explanation of deductions
claimed in column 5**

Schedule D - PROFIT (OR LOSS) FROM BUSINESS OR TRADE

1. Total receipts (state nature of business or profession). COST OF GOODS SOLD		10. Salaries not included as "Labor" (do not deduct compensation for yourself).	
2. Labor		11. Interest on business indebtedness.	
3. Material and supplies		12. Taxes on business and property.	
4. Merchandise bought for sale		13. Losses (explain in Schedule G).	
5. Other costs (itemize below)		14. Bad debts arising from sales or services.	
6. Plus inventory at beginning of year		15. Depreciation, amortization, and depletion (explain in Schedule E).	
7. Total (lines 2 to 6)		16. Rent, repairs, and other expenses (itemize below or on separate sheet).	
8. Less inventory at end of year		17. Total (lines 10 to 16).	
9. Net cost of goods sold (line 7 minus line 8)		18. Total deductions (line 9 plus line 17).	
Enter "C" or "C or M" on lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.		19. Net profit (or loss) (line 1 minus line 18) (enter as item 9, page 1).	

**Explanation of deductions
claimed on lines 5 and 16**

Schedule E. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C AND D

SCHEDULE FOR DEPRECIATION CLAIMED IN SCHEDULES C AND D									
1. Kind of Property (If Building, State Material of which Constructed)	2. Date Ac- quired	3. Cost or Other Value	4. Assess Pur- chase Price or Val- ue at End of Year	5. Depreciation Rate per Annum (See Schedule A)	6. Remaining Cap- ital Account	7. Life Used	8. Estimated Residual Value	9. Depre- ciation for Year	
1. <u>Poly Brick</u> 2. <u>424 Franklin</u> .	7/37	65000	-	-	147500	-	50	19 1/2	500

Exhibit C-1 (Attached to Amended Motion)

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Page 8

Line No.	SCHEDULE F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY. (See Instruction 10)					
	1. Date Acquired Mo. Day Year	2. Date Sold or Exchanged Mo. Day Year	3. Time Held (Check One)	4. Gross Sales Price (Contract Price)	5. Cost or Other Basis	6. Expenses of Sale and Cost of Improvement Subtracted in Preparation for Sale or Death (Mo. Day Year)
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Schedule H.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SC

1. Name of Person	2. Name of Person	3. Name
John Doe	Jane Doe	J. Doe

Schedule I.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23.)

(a) Personal Exemption			(b) Credit for Dependents			
State	Number of Months During Year in Each Month	Credit Claimed	Name of Dependent and Relationship		Number of Months During the Year	
Single, or married and not living with husband or wife.	12	\$1000			Under 18 Years Old	
Married and living with husband or wife.					Over 18 Years Old	
Head of family (explain below)					Credit Claimed	
Reason for credit						Reason for support if 18 years old or over
Name of dependent and relationship						

Schedule J.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(a) For Net Income of \$3,000, or Less	(b) For Net Income in Excess of \$3,000
1. Net income (item 20, page 1).....	\$ 1046.00
2. Earned income credit (10% of line 1, above).....	104.60

QUESTIONS

1. State your principal occupation or profession ST CLODE, N.Y.

2. Check whether you are a citizen or resident alien

3. If you filed a return for the preceding year, to which Collector's office was it sent? No INCOME

4. Are items of income or deductions of both husband and wife included in this return? (See Instruction B) _____

5. State name of husband or wife if a separate return was made and the Collector's office to which it was sent _____

6. Check whether this return was prepared on the cash accrual basis.

7. Did you at any time during your taxable year own directly or indirectly any stock of a domestic or foreign personal holding company? (Answer "yes" or "no") NO. If answer "yes", attach schedule required by Instruction M.

AFFIDAVIT. (See Instruction F)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Acts of 1936 and 1937 and the regulations issued thereunder.

Subscribed and sworn to by Thomas Gaskin

A return made by an agent must be accompanied by power of attorney. (See Instruction F.)

AFTIRAYIT: One Instruction

—If this return was prepared for you by some other person, the following affidavit must be executed.

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income-tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this day

• 193 •

Summary and tasks of other departments



Chapter 1 — An introduction to the subject

Actions of genes controlling the outcome

Plan of the exhibition. II

Treasury Department

DE LINQ U E M T
FORM 1040

Internal Revenue

UNITED STATES

938 INDIVIDUAL INCOME TAX RETURN 1938

(Author's Stamp)

FOR NET INCOMES OF MORE THAN \$5,000 FROM SALARIES, WAGES,
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

(Do not use these spaces)

For Calendar Year 1938
or fiscal year beginning 1938, and ended 1938File
CodeSerial
No.

District

(Before Preparing This Return, Read the Instructions Carefully)
To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third
month following the close of your taxable year

(Author's Stamp)

PRINT NAME AND ADDRESS PLAINLY (See Instructions 10)

THEODORE GOLDSTEIN

(Name) (D a short name of both husband and wife, if a joint return)

415 ALDINE AVENUE

(Street and number, or road name)

CHICAGO ILL.

(Post office) (City) (State)

Code - Check - M.O.

Post Payment

INCOME

Salaries and other compensation for personal services. (From Schedule A)

Dividends

Interest on bank deposits, notes, mortgages, etc.

Interest on corporation bonds

Taxable interest on Government obligations, etc. (From Schedule B)

Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses).

(From report and address)

Income from fiduciaries. (From trust and address)

340 07

Rents and royalties. (From Schedule C)

Income (or loss) from business or profession. (From Schedule D)

(i) Net short-term gain from sale or exchange of capital assets. (From Schedule F)

(ii) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule F)

(iii) Net gain (or loss) from sale or exchange of property other than capital assets. (From

Schedule G)

Other income (including income from annuities). (Check entries are separate schedule H summary)

Total income in items 1 to 11. (List non-taxable income in Schedule D)

340 07

DEDUCTIONS

Contributions paid. (Capitalize in Schedule H)

Interest. (Capitalize in Schedule H)

Taxes. (Capitalize in Schedule H)

Losses from fire, storm, shipwreck, or other casualty, or theft. (Capitalize in Schedule H)

Bad debts. (Capitalize in Schedule H)

Other deductions authorized by law. (Capitalize in Schedule H)

Total deductions in items 13 to 18.

Net income (item 12 minus item 19)

340 07

COMPUTATION OF TAX

Net income (item 20 above)

Less: Personal exemption. (From Schedule J-1)

Credit for dependents. (From Schedule J-2)

Balance (surplus net income)

Less: Income on Government obligations. (See instruction 28)

Earned income credit. (From Schedule K-1 or K-2)

Balance subject to normal tax

II-One form needed. DUPLICATE COPY EX-1

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28. Normal tax (4% of item 27)

29. Surtax on item 24. (See instruction 29)

30. Total (item 28 plus item 29)

31. Total tax (item 30, or if you had a net long-

term capital gain or loss, enter line 16, Schedule F)

32. Less: Income tax paid at

source

Income tax paid at source

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Items 22 and 23

be assessed if duplicate copy is not filed

Form 1040

Section A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

1

1. Name and address of employer and nature of business	2. Assess	3. Expenses (Amount)	4. Assets
.....
.....
.....

Total of column 2 minus total of column 4 (enter as item 1, page 1).

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction B)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of each obligation held by another, and amount of principal due or accrued thereon	3. Interest received or earned during the year	4. Interest earned from securities	5. Interest as above in amount of securities
Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions.				
Obligations issued under Federal Farm Loan Act, or under such Act as amended.				
Obligations of United States issued on or before September 1, 1917, Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness.				
United States Savings Bonds and Treasury Bonds.				
Obligations of instrumentalities of the United States (other than obligations to be reported in (1) above).				

Total (enter as item 9, page 1).

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 6)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule D)	4. Repairs (explain below)	5. Other expenses (explain below)	6. Net profit (Subtract 2 from the sum of columns 3, 4 and 5) (enter to item 8, page 1)
Lots or land 1/4 acre	1,207.80	22.00	1,000.00	-	8. 738.80 1. 340.09

Janation of deductions

Lamination of deductions
aimed in columns 4 and 5 R-E-T-~~738~~-12

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 2.)

and accounts (state nature of business or profession).

SALARIES (state nature of business or profession).		OTHER BUSINESS DEDUCTIONS	
COST OF GOODS SOLD		10. Salaries not included as "Labor" (do not deduct compensation for yourself).	
Labor	\$		\$
Material and supplies		11. Interest on business indebtedness	
Merchandise bought for sale		12. Taxes on business and business property	
Other costs (itemize below)		13. Losses (explain below)	
Less inventory at beginning of year		14. Bad debts arising from sales or services	
Total (lines 2 to 6)	\$	Depreciation, obsolescence, and depletion (explain in Schedule E)	
Less inventory at end of year		16. Rent, repairs, and other expenses (itemize below or on separate sheet)	
Net cost of goods sold (line 7 minus line 8)	\$	17. Total (lines 10 to 16)	\$
Total deductions (line 9 plus line 17)		18. Total (line 9 plus line 17)	\$
Net profit (or loss) (line 1 minus line 18) (enter as item 9, page 1)		19. Net profit (or loss) (line 1 minus line 18) (enter as item 9, page 1)	\$

star "C," or "C or M." on lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 5, 13; and 16

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

Page 8

Schedule F.—GAINS AND LOSS*

FROM SALES OR EXCHANGES OF CAPI

ASSETS. (See Instruction 10)

1. Kind of property (If property worth less than \$1000, mark with check below)	2. Date acquired	3. Date sold	4. Gross sales price (nearest thousand)	5. Cost or other basis	6. Expenses of sale and cost of replacement (if any) or amount of loss sustained by replacement	7. Date of sale (or otherwise disposed of) or date of replacement (or March 1, 1913, if no date given)	8. Grade or kind (check one) (mark with check below)	9. Grade or kind or value (check one)	10. Amount
Mr. Dan Yost	Mr. Dan Yost								

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 12 MONTHS

Total net short-term capital gain or loss (enter in line 1, column 2, of summary below).

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 18 MONTHS BUT NOT FOR MORE THAN 24 MONTHS

1.000 METAL PARTS 1.000 METAL PARTS 1.000 METAL PARTS

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 24 MONTHS

Total net long-term capital gain or loss (enter in line 2, column 2, of summary below) ..

SUMMARY OF CAPITAL NET GAINS OR LOSSES

1. Classification	2. Net gain or loss to be taken into account from item 10, above		3. Net gain or loss to be taken into account from paragraphs one and "carried over funds"		4. Total net gain or loss to be taken into account in columns 2 and 3 of this summary	
	Gain	Loss	Gain	Loss	Gain	Loss
Total net short-term capital gain or loss (enter as item 10 (a), page 1, amount of gain shown in column 4).	8.	9.	8.	9.	8.	9.
Total net long-term capital gain or loss (enter as item 10 (b), page 1, amount of gain or loss shown in column 4).	8.	9.	8.	9.	8.	9.

as the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items; any of the above items may be sold by one other than its respective vendor fully compensated.

COMPUTATION OF ALTERNATIVE TAX

Net income (Item 20, page 1). (a) Net long-term capital gain (Item 10 (3), page 1). (b) Net long-term capital loss (Item 10 (3), page 1). Ordinary income (line 1 minus line 2 (a) or line 1 plus line 2 (b)).			
Less Personal exemptions. (From Schedule J-1). Credit for dependents. (From Schedule J-2). Balance (series net income). Less interest on Government securities. etc. (See Instruction 23). Interest income credit. (From Schedule J-1 or K-2). Balance subject to normal tax.			
10. Normal tax (4% of line 9). 11. Surcharge & (See Instruction 27). 12. Partial tax (line 10 plus line 11). (a) 30% of net long-term capital gain (30% of line 2 (a)). (b) 30% of net long-term capital loss (30% of line 2 (b)). 13. Alternative tax (Line 12 plus line 13 (a) or line 12 minus line 13 (b)). 14. Total liability (A) not long-term capital gain, or lines 2 (a), plus line 14 or line 15, whichever is greater, if A is less than 30% of net long-term capital loss, or line 2 (b), minus line 14 or line 15, whichever is the greater. (Refer to Item 31, page 1).			

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 18)

1. Kind of property	2. Date registered	3. Gross value price (maximum price)	4. Cost or other basis	5. Percentage of yield and date of last valuation or date of registration or date of assessment	6. Description referred to in section 10(1) of the Income Tax Act, 1961	7. Only or last (column 3 and column 4)
		0.	0.	0.	0.	0.

Total net sales for fiscal year 1987/88 were \$13.

With the growth of the city, the number of inhabitants increased rapidly.

and its family, literary, or business relationship to you, if any, of producer of any of the above

FORM 1040
January Department
Internal Revenue Service

**DELINQUENT
UNITED STATES**
INDIVIDUAL INCOME TAX RETURN Ex. C-3 39

FOR NET INCOMES OF MORE THAN \$6,000 FROM SALARIES, WAGES,
DIVIDENDS, INTEREST, ANNUITIES, AND FOR INCOMES FROM
OTHER SOURCES REGARDLESS OF AMOUNTS

For Calendar Year 1939

or fiscal year beginning 1939, and ended 1940

To be filed with the Collector of Internal Revenue for your district not later than the 15th day of the third month following the close of your taxable year.

PRINT NAME AND ADDRESS PLAINLY. (See Instructions C)

THEODORE GOLDSTEIN
(Show the names of both husband and wife, if this is a joint return)
415 ALDINE AVENUE
(Street and number, or road name)
CHICAGO ILL.

(Do not use three spaces)

P. I. C. No.

F. I. C. No.

Date:

(Cashier's Stamp)

Cash—Check—M. O.

For Payment

INCOME			
Salaries and other compensation for personal services. (See Schedule A)			
Dividends			
Interest on bank deposits, notes, mortgages, etc.			
Interest on corporation bonds			
Taxable interest on Government obligations, etc. (See Schedule B)			
Income (or loss) from partnerships, syndicates, pools, etc. (other than capital gains or losses). (See items and schedules)			
Income from estates. (See items and addresses)			
Rents and royalties. (See Schedule C)		<u>1035</u>	<u>1115 60</u>
Income (or loss) from business or profession. (See Schedule D)			
(i) Net short-term gain from sale or exchange of capital assets. (See Schedule F)			
(ii) Net long-term gain (or loss) from sale or exchange of capital assets. (See Schedule F)			
(iii) Net gain (or loss) from sale or exchange of property other than capital assets. (See Schedule G)			
Other income (including income from annuities) (See items)			
Total income in items 1 to 11. (See amounts shown in Schedule D)		<u>4,957</u>	<u>8,1115 60</u>
DEDUCTIONS			
Contributions paid. (See Schedules D, E)			
Interest. (See Schedules D, H)			
Taxes. (See Schedules D, H)			
Losses from fire, storm, shipwreck, or other casualty, or theft. (See Schedules D, H)			
Bad debts. (See Schedules D, H)			
Other deductions authorized by law. (See Schedules D, H)			
Total deductions in items 13 to 18.			
Net income (item 12 minus item 19).		<u>8,1045</u>	

COMPUTATION OF TAX

Net income (item 20 above)	\$	26. Normal tax (4% of item 27)	\$
Less: Personal exemption. (See Schedule J-1)	\$	27. Surplus on item 24. (See Instructions 29)	\$
Credit for dependents. (See Schedule J-2)	\$	28. Total (item 26 plus item 29)	\$
Balance (surplus net income)	\$	31. Total tax (item 28, or if you had a net long-term capital gain or loss, enter line 16, Schedule F)	\$
Less: taxes on Government obligations, etc. (See Instructions 20)	\$	32. Less: Income tax paid at source	\$
Earned income credit. (See Schedule K-1 or K-2)	\$	33. Balance of tax after allowing for source tax paid	\$
Balance subject to normal tax	\$	34. Balance of tax (See line 24 minus lines 22 and 23)	\$ <u>8,1045</u>

NOTE—One form marked "DUPLICATE"

This will be canceled if duplicate copy is not filed.

56 Exhibit C-3 (Attached to Amended Motion)

Schedule A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES, AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

1. Name and address of employer and nature of business	2. Amount	3. Expenses deducted	4. Balance

Total of column 2 minus total of column 4 (enter as item 1, page 1).

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction C)

1. Obligation or security	2. Amount owned at end of year including your representative share of each obligation held by others, trusts, partnerships, or common trust funds	3. Interest received or earned during the year	4. Interest unpaid from previous	5. Interest or income of month of
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States government.			All..	XXXXXX
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended.			All..	XXXXXX
(c) Obligations of United States issued on or before September 1, 1917.			All..	XXXXXX
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness.			All..	XXXXXX
(e) United States Savings Bonds and Treasury Bonds.			All..	XXXXXX
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (d) above).			All..	XXXXXX
(g) Total (enter as item 5, page 1).				

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 5)

1. Kind of property	2. Amount	3. Depreciation (explain in Schedule D)	4. Rent or Royalties (explain below)	5. Other expenses (explain below)	6. Net profit (subtract sum of columns 3, 4, and 5 from 2, enter as item 5, page 1)
1-story brick 3424 Lawrence Ave	1350	- 1000	-	1465 60	115

Explanation of deductions
claimed in columns 4 and 5 P. E. Tax 1465.60

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

State business name and address if different from name and address on page 1

1. Total receipts (state nature of business or profession)	2. Cost of goods sold	3. OTHER BUSINESS DEDUCTIONS	4. Total
2. Labor	\$	10. Salaries not included as "Labor" (do not deduct compensation for yourself)	\$
3. Material and supplies		11. Interest on business indebtedness	
4. Merchandise bought for sale		12. Taxes on business and business property	
5. Other costs (itemize below)		13. Losses (explain below)	
6. Plus inventory at beginning of year		14. Bad debts arising from sales or services	
7. Total (lines 2 to 6)	\$	15. Depreciation, obsolescence, and depletion (explain in Schedule E)	
8. Less inventory at end of year		16. Rent, repairs, and other expenses (itemize below or on separate sheet)	
9. Net cost of goods sold (line 7 minus line 8)	\$	17. Total (lines 10 to 16)	\$
If the production, manufacture, purchase and sale of merchandise is an income-producing factor, inventories are required. Enter "C." or "M." on lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.		18. Total deductions (line 9 plus line 17)	
		19. Net profit (or loss) (line 1 minus line 18) (enter as item 9, page 1)	

Explanation of deductions
claimed in lines 5, 13, and 16

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES C, D, F, AND G

1. Kind of property (if buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis	4. Assets fully depreciated in use at end of year	5. Depreciation claimed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in recovering the depreciation	8. Estimated life from original date of construction	9. Quantum of deduction
1-story brick 3424 Lawrence Ave	1/37	\$50000 -	\$1500	\$1500 - \$48500 -	\$50	50	50	\$1000

Exhibit C-3 (Attached to Amended Motion)

57

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF

ITAL ASSETS. (See Instruction 10.)

Page 9

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 12 MONTHS

Total net short-term capital gain or loss (enter in line 1, column 3, of summary below).

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 12 MONTHS BUT NOT FOR MORE THAN 36 MONTHS

RENTED HOME FOR MORE THAN 12 MONTHS BUT NOT FOR MORE THAN 24 MONTHS

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 12 MONTHS

Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)

SUMMARY OF CAPITAL, NET GAINS OR LOSSES

the family, fiduciary, or business relationship to you, if any, of purchasers of any of the above items. Any of the above items were acquired by you other than by purchase, explain fully how acquired.

COMPUTATION OF ALTERNATIVE TAX
(To be used only in the case of a net long-term capital gain or loss)

income (item 20, page 1). (See Instruction 10).	8.	
Net long-term capital gain (item 10 (b), page 1).		9.
Net long-term capital loss (item 10 (b), page 1).		10.
Any net income (line 1 minus line 2 (a) or line 1 plus line 10). (See Instruction 10).	8.	11.
Personal consumption. (From Schedule J-1).		12.
Credit for dependents. (From Schedule J-2).		13.
Net (aratus net income).	8.	(a) 30% of net long-term capital gain (30% of line 2 (a)).
Interest on Government obligations, etc. (See Instruction 25).		(b) 30% of net long-term capital loss (30% of line 2 (b)).
Earned income credit. (From Schedule K-1 or K-2). (See Inst. 10).		14. Alternative tax (line 12 plus line 13 (a) or line 12 minus line 13 (b)).
No subject to normal tax.	8.	15. Total normal tax and surtax (item 24, page 1).
		16. Tax liability (if a net long-term capital gain, on line 2 (a), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 24, page 1.)

Schedule C.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 10.)

Total net gain (or loss) (enter as item 10 (c), page 1)

*the family, fiduciary, or business relationship to you, if any, of purchaser of any of the above items;
any of the above items were acquired by you other than by purchase, explain fully how acquired:*

Schedule H.—EXPLANATION OF REDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

1. Item No.	2. Explanation	3. Amount	4. Item No. (continued)	5. Explanation (continued)	6. Amount

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE E. (See Instruction 5)

1. Source of income	2. Nature of income	3. Amount

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23. (See Instructions 22 and 23)

(1) Personal Exemption.		(2) Credit for Dependents	
Status	Number of dependents during the year to which claim relates	Credit claimed	Name of dependent and relationship
Single, or married and not living with husband or wife.	1 2	\$ 1000	
Married and living with husband or wife.			
Head of family (explain below).			

Reason for support
if over 18 years old**Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)**

(1) If your net income is \$6,000 or less, use only this part of schedule		(2) If your net income is more than \$6,000, use only this part of schedule	
Net income (Item 20, page 1).	\$ 0	Earned net income (not more than \$14,000).	\$ 0
Earned income credit (10% of net income, above).		Net income (Item 20, page 1).	

- QUESTIONS
1. State your principal occupation or profession *Attendant*
 2. Check whether you are a citizen or a resident alien
 3. If you filed a return for the preceding year, to which Collector's office was it sent? *13th*
 4. Are items of income or deductions of both husband and wife included in this return?
 5. State (a) Name of husband or wife if separate return was made

- (b) Personal exemption if any, claimed thereon
- (c) Collector's office to which it was sent
6. Check whether this return was prepared on the cash or accrual basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501? (Answer "no" if answer is "yes," attach statement required by Instruction J.) *No*

AFFIDAVIT. (See Instruction 8)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been prepared by me/us, and is best of my/our knowledge and belief is a true, correct, and complete return, made in good faith for the taxable year stated, pursuant to Internal Revenue Code, as amended, and the regulations issued under authority thereof.

Subscribed and sworn to by *Charles Hobbs*
 before me this 12 day of July 1947
Stanley A. Norquist Deputy Clerk
 (Signature and title of officer administering oaths)
 A power made by an agent must be accompanied by power of attorney. (See Instruction 8)

(Signature). (See Instruction 8)

AFFIDAVIT. (See Instruction 8)

(If this return was prepared for you by some other person, the following affidavit must be executed.)
 I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this _____ day of _____ 19____

(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm or employee, if any)

(Signature and title of officer administering oaths)



60. Exhibit C-4 (Attached to Amended Motion)

Schedule A.—INCOME RECEIVED FROM CITIZENS CONSISTING OF SALARIES, WAGES, FEES, COMMISSIONS, ETC., AND OTHER COMPENSATION FOR PERSONAL SERVICES.

1. Name of the organization	2. Address	3. Name _____	4. _____

Total of column 3 minus total of column 4 (water as item 1, ppm D)

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. See Instruction C.

1. Obligations or securities	2. Amount unpaid at end of year including any premium paid or discount allowed there held by another, trustee, government or committee from funds	3. Interest received or earned during the year	4. Amount of obligations or securities which are exempt from imposition	5. Interest or income of same
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions			All	
(b) Obligations issued under Federal Farm Loan Act, or under such Act as amended			All	
(c) Obligations of United States issued on or before September 1, 1917			All	
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	
(e) United States Savings Bonds and Treasury Bonds			\$5,000	B
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (3) above)			None	
(g) Total (enter as item 3, page 1)				

Schedule C.—INCOME FROM RENTS AND ROYALTIES (See Instruction 2)

RENTS AND ROYALTIES. (See Instruction 5)					
1. Kind of property	2. Amount	3. Depreciation (explain in Schedule D)	4. Repair (explain below)	5. Other Income (explain below)	6. Net profit (subtract lines 2, 3, 4, and 5 from line 1, or add line 1 to line 6 if negative) (Enter on back of card)
1 Story Brick 3424 Lawrence Ave	\$ 900	-	\$ 1000	-	\$ 1531 .08 \$ (1631)

Explanation of deductions claimed in columns 4 and 5 R.H. Tax 1531.00

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION

State (1) nature of business

W. E. BROWN. 1900 INVESTIGATOR

卷之三

and add:

2000-2001

(To be used after investigation has been completed.)

2. Inventory at beginning of year
 3. Merchandise bought for sale
 4. Labor
 5. Material and supplies
 6. Other costs (itemize below)
 7. Total of lines 2 to 6
 8. Less inventory at end of year
 9. Net cost of goods sold (line 7 minus line 8)
 10. Gross profit (line 9 minus line 1)

OTHER BUSINESS DECISIONS

- 11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself)**

12. Interest on business indebtedness

13. Taxes on business and business property

14. Rent (explain below)

15. Bad debts arising from sales of services

16. Depreciation, obsolescence, and depletion (explain in Schedule E)

17. Rent, repairs, and other expenses (itemize below or on separate sheet)

18. Total of lines 11 to 17

19. Net profit (or loss) (line 1 minus lines 9 and 18) (enter as line 3, page 1)

If the production, manufacture, purchase and sale of merchandise is an income-producing factor, inventories are required. Enter "C" or "Our M" in line 1 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed on lines 6, 14, and 17

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE C

Exhibit C-4 (Attached to Amended Motion) 61

61

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 10) Page 8

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 12 MONTHS

Total net short-term capital gains or losses (enter in line 1, column 3 of summary table).

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 12 MONTHS BUT NOT FOR MORE THAN 36 MONTHS

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 12 MONTHS

CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 36 MONTHS						
						\$0
						\$0
						\$0
						\$0

Total net long-term capital gain or loss (enter in line 2, column 3 of summary table)

SUMMARY OF CAPITAL NET GAINS OR LOSSES

COMPUTATION OF ALTERNATIVE TAX

COMPUTATION OF ALTERNATIVE TAX
Use only (1) if you had a net long-term capital gain, and Item 24, page 2, is
more than zero.

(2) If you had a net long-term capital gain, and Item 24, page 1, exceeds \$32,000

Net income (Form 20, page 1). (See Instruction 10).		10. Normal tax (4% of line 9).	
Net long-term capital gain (Form 10 (5), page 1).		11. Supers on line 6. (See Instruction 29).	
Net long-term capital loss (Form 10 (6), page 1).		12. Partial tax (line 20 plus line 11).	
Ordinary income (line 1 minus line 2 (e) or line 1 plus line 2 (f)). (See Instruction 10).		13. (e) 30% of net long-term capital gain (30% of line 2 (e)).	
Personal exemptions. (From Schedule J-1).		(f) 30% of net long-term capital loss (30% of line 2 (f)).	
Credit for dependents. (From Schedule J-3).		14. Alternative tax (line 12 plus line 13 (e) or line 12 minus line 13 (f)).	
Other (net or income).		15. Total normal tax and supers (Form 20, page 1).	
Interest on Government obligations.		16. Tax liability if a net long-term capital gain, on line 2 (e), enter line 14 or line 15, whichever is the greater; if a net long-term capital loss, on line 2 (f), enter line 14 or line 15, whichever is the greater. (Enter as line 31, page 1).	
Interest income credit. (From Schedule J-1 or K-1 or K-3). (See line 10).			
Subject to normal tax.			

OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL. AND

1. Kind of property	2. Name required	3. Cross reference	4. Copy or other	5. Statement of value	6. Description of property	7. Date or last valuation

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Mr. Justice, Minister, or Senator relationship to you, if any, of members of any of the firms on this page. If so, and how was it created by your election by previous notice both have received.

Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 20, 21, 22, 24, 27, AND 28

1. Item No.	2. Description	3. Amount	4. Method	5. Explanation (See Instructions G)	6. Date

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE D. (See Instructions G)

1. Source of Income	2. Nature of Income	3. Date

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 29 AND 30. (See Instructions H and I)

(1) Personal Information		(2) Credits for Dependents		
Name	Number of dependents claimed and relationship to filer	Credit claimed	Date of dependence and relationship	W.D.C. amount Item 29 Item 30
Single, or married and not living with husband or wife.	0	\$ 550	\$ 55	
Married and living with husband or wife.	4	\$ 644	\$ 64	
Head of family (explain below).				

Reason for support
if over 18 years old**Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 20)**

(1) If prior net income to taxpayer or his spouse, use only this part of calculation	(2) If prior net income to spouse (less \$6,400), use only this part of calculation
Net income (Item 20, page 1).	\$
Earned income credit (10% of net income, above)	\$

Earned net income (not more than \$14,000). \$

Net income (Item 20, page 1).

Earned income credit (10% of earned net income
or 10% of net income, above, whichever amount
is smaller, but do not enter less than \$300).**QUESTIONS**

- State your principal occupation or profession. **Attorney**
- Check whether you are a citizen or a resident alien .
- Did you file a return for any prior year? If so, what was the 1947? To which Collector's office was it sent? 165 TII. To which Collector's office was it sent?
- Are items of income or deductions of both husband and wife included in this return?
- State (a) Name of husband or wife if separate return was made

- Personal exemption, if any, claimed thereon
- Collector's office to which it was sent
- Check whether this return was prepared on the cash accrual basis.
- Did you at any time during your taxable year own directly any stock of a foreign corporation or a partnership company as defined by section 50 of the Internal Revenue Code? (Answer "yes" or "no") If answer is "yes," attach statement required by Instruction J.

AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year/years stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Subscribed and sworn to by The City of GoldsteinAlvin J. Goldstein(Signature)
(See Instruction D)before me this 29 day of September, 1947.Facsimile of Alvin J. Goldstein, Attorney
(Signature and title of attorney administering oaths)

A return made by an agent must be accompanied by power of attorney. (See Instruction E.)

(If this is a joint return (not made by agent), it must be sworn to by both husband and wife. It must be sworn to before a lawyer or other person preparing the return. If neither a lawyer nor the return, it must be sworn to by both spouses.)

AFFIDAVIT. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed.)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 1947 day:

(Signature of person preparing the return)

(Signature of person preparing the return)

(Signature of law or notary, if used)

(Signature and title of law or notary, if used)

(Signature of law or notary, if used)

50-17168

FORM 1040
Department of Revenue
Individual Income Tax

(Auditor's Stamp)

AMENDED
UNITED STATES

EX- C-5

1941

INDIVIDUAL INCOME TAX RETURN

OPTIONAL FORM 1040 MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS NOT MORE THAN \$100 AND COMPENSATION DUE TO SALARIES, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST, RENT, ANNUITIES, OR BONITALES.

(Do not use these spaces)

For Calendar Year 1941

or fiscal year beginning 1941, and ending 1942

To be filed with the Collector of Internal Revenue for place where not later than the 15th day of the third month following the close of your taxable year

PRINT NAME AND ADDRESS PLAINLY. (See Instructions C.)

THEODORE W. GOLDSTEIN

(Name) (Use given names of both husband and wife, if this is a joint return)

415 Aldine Ave.

Chicago

(Street and number, or road name)

III

(County)

(State)

Cash Check M.O.

Post Payment

Item and
description No.

INCOME	Amount	Proportion (check one column)	(Name)	(Address)
1. Salaries and other compensation for personal services, §	\$		\$ 2600	-
2. Dividends				
3. Interest on (a) bank deposits, notes, etc., § ; (b) corporation bonds, §				
4. Interest on Government obligations, etc.: (a) From line (3), Schedule A, \$; (b) from line (3), Schedule A, \$				
5. Rents and royalties. (From Schedule B)		Loss	(325)	
6. Annuities				

ITEMS 1, 2, AND 3, AND 5, 6, 7, 8, 9, 10, 11, AND 12 NEED NOT BE COMPUTED
UNLESS YOU HAVE INCOME IN THE AMOUNTS IN ADDITION TO THOSE ABOVE.

7. (a) Net short-term gain from sale or exchange of capital assets. (From Schedule D)	
(b) Net long-term gain (or loss) from sale or exchange of capital assets. (From Schedule D)	
(c) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule D)	
8. Net profit (or loss) from business or profession. (From Schedule E)	
(State total receipts, from line 1, Schedule H, \$)	
9. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule F)	
10. Total income in items 1 to 9	\$ 2275

DEDUCTIONS

11. Contributions paid. (From Schedule C)	\$ 60	-
12. Interest. (From Schedule C)		
13. Taxes. (From Schedule C)		
14. Losses from fire, storm, shipwreck, or other casualty, or theft. (From Schedule C)		
15. Bad debts. (From Schedule C)		
16. Other deductions authorized by law. (From Schedule C)		
17. Total deductions in items 11 to 16	\$ 50	-
18. Net income (item 10 minus item 17)	\$ 2225	-

COMPUTATION OF TAX

19. Net income (item 18 above)	\$ 2225	-	26. Normal tax (4% of item 25)	\$ 88	60
20. Less: Personal exemption. (From Schedule D, 1)	\$ 1437 50		27. Surtax on item 22. (See Instructions D)	\$ 47	25
21. Credit for dependents. (From Schedule D, 1)	1437 50		28. Total (item 26 plus item 27)	\$ 65	65
22. Balance (surplus net income)	\$ 787 50		29. Total tax (item 28 or line 18, Schedule H)	\$ 65	
23. Less: Item 4 (a) above	\$		30. Less: Income tax paid at source	\$	
24. Earned income credit. (From Schedule H, line 17)	222 50		Income tax paid in a foreign country or U.S. possessions (Attach Form 1103)	\$	
25. Balance subject to normal tax	\$ 565	-	32. Balance of tax (item 29 minus items 30 and 31)	\$ 65	65

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/we and is the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Subscribed and sworn to by Theodore W. Goldstein Chandler S. Green (Signature) (See Instructions E)

before me this 23 day of September 1941.

This is a joint return (and made by spouse). It must be signed by both husband and wife. It must be sworn to before a proper officer by the person preparing the return.

If THIS RETURN WAS PREPARED FOR YOU BY SOME OTHER PERSON, THE AFFIDAVIT ON PAGE 4 MUST BE EXECUTED.

10-2488

64 Exhibit C-5 (Attached to Amended Motion)

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

1. Obligation or certificate	2. Amount unpaid at year beginning or date of instrument, less amount paid during year by interest, taxes, etc., or by other means	3. Interest unpaid at beginning of year	4. Amount of interest paid during year	5. Interest on amounts paid during year
(a) Obligations of a State, Territory, or political subdivision thereof, or of the District of Columbia, or United States Savings Bonds held prior to March 1, 1941, under Federal Home Loan Act, or under such Act as may be reenacted.	\$			All.....
(b) Obligations issued prior to March 1, 1941, under Federal Home Loan Act, or under such Act as may be reenacted.				All.....
(c) Obligations of United States issued on or before September 1, 1937.				All.....
(d) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness issued prior to March 1, 1941.				All.....
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941.				All.....
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (g) above) issued prior to March 1, 1941.				All.....
(g) Dividends on share accounts in Federal savings and loan associations.				None.....
(h) Total (enter on Item 4 (a), page 1).				
(i) Obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as Item 4 (b), page 1).				Amount unpaid at beginning of year and interest thereon (enter amount of interest as Item 4 (b), page 1)

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction H)

1. Kind of property	2. Amount	3. Depreciation deduction (check marks)	4. Deduction (check marks)	5. Other property (check marks)	6. Net profit (loss) left after deducting expenses on Schedule C
1 Story Brick 3424 Lawrence Ave	\$ 82 675 - 1000	-	-	None	\$ 825

Explanation of deductions claimed in columns 4 and 5.

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 11, 12, 13, 14, 15, AND 16

1. Item No.	2. Explanation	3. Amount	1. Item No. (continued)	2. Explanation (continued)	3. Amount
	Contributions	\$ 80 -			

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 20 AND 21. (See Instructions 20 and 21)

(1) Personal Exemption

Name	Number of months during the year in which claimant was present	Credit claimed
Single, or married and not living with husband or wife, and not head of family.	11	\$ 1375
Married and living with husband or wife.	1	65
Head of family (explain below).		80

(2) Credit for Dependents

Name of dependent and relationship	Number of months during the year Under 18 years old	Number of months during the year 18 years or over	Credit claimed
			8

Reason for support if 18 years
or over

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 24)

(1) If your net income is \$6,000 or less, enter only this part of column 3	(2) If your net income is more than \$6,000, enter only this part of column 3
Net income (Item 18, page 1).....	\$ 2225 -
Earned income credit (10% of net income, above).....	\$ 222 50

QUESTIONS

- State your principal occupation or profession Attorney
- Name and address of employer
- Do you file a return (any prior year)? Yes If no, what was the latest year? 1960 To which Collector's office was it sent?
- If separate return was made for the current year, state:
 - Name of husband or wife
 - Personal exemption, if any, claimed thereon
 - Collector's office to which it was sent
- Check whether this return was prepared on the cash [] or accrual [] basis.
- If return on cash basis, do you elect, under section 42, to include or exclude

- Received in the current year the income for current and prior year in the redemption price of non-interest-bearing obligations issued by a discount? If so, attach statement listing obligations, method of computation of the accrued income. Report such income as item 3 or 4, page 1, wherever applicable.
- Did you receive during the taxable year any noninterest-bearing bonds for interest reported on Schedule A (see Instruction G)? If so, attach schedule showing source, nature, and amount of such income.
- Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 301 of the Internal Revenue Code? If so, attach statement required by Instruction J.

DETACH PAGES 3 AND 4 IF NOT USED

1

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Information 7)

Total net short-term capital gain or loss (enter in line 1, column 2 of statement A-1)

LONG-TERM CAPITAL GAINS AND LOSSES—ANNUAL HOLD TIME REPORT

Total net long-term capital gain or loss (enter in line 2, column 3, if applicable)

SUMMARY OF NEW CAREER GAME OF LOGIC

SUMMARY OF NET CAPITAL GAINS OR LOSSES							
1. Classification		2. Net short-term capital gain or loss (enter as item 7 (a), page 1, amount of gain shown in column 5)		3. Net gain or loss to be taken into account from columns 11, where gain or loss shown for each year)		4. Net gain or loss to be taken into account from partnerships and insurance trust funds	
		Date	Loss	Date	Loss	Date	Loss
1. Total net short-term capital gain or loss (enter as item 7 (a), page 1, amount of gain shown in column 5)	0						
2. Total net long-term capital gain or loss (enter as item 7 (b), page 1, amount of gain or loss shown in column 5)	0						
							No net long-term capital gain or loss (checkmark if applicable) <input type="checkbox"/>

COMMITTEE ON ALTERNATIVE TAXES

COMPUTATION OF ALTERNATIVE TAX
Use only if you had a net long-term capital gain and item 21 above is greater than zero.

If you had a net long-term capital gain, and Item 22, page 1, claimed \$12,000, or

- | | | | |
|--|-------|---|-------|
| 1. Net income (Line 18, page 1). (See instruction 7). | ..... | 10. Normal tax (14% of line 9). | ..... |
| 2. (a) Net long-term capital gain (Line 7 (d), page 1). | ..... | 11. Surplus on line 6. (See instruction 27). | ..... |
| (b) Net long-term capital loss (Line 7 (e), page 1). | ..... | 12. Partial tax (Line 10 plus line 11). | ..... |
| 3. Ordinary income (Line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See instruction 7). | ..... | 13. (a) 30% of net long-term capital gain (10% of line 2 (d)). | ..... |
| 4. Loss (Personnel) deduction. (From Schedule D-1). | ..... | (b) 30% of net long-term capital loss (10% of line 2 (b)). | ..... |
| 5. Credit for dependents. (From Schedule D-2). | ..... | 14. Alternative tax (Line 12 plus line 13 (a) or line 12 minus line 13 (b)). | ..... |
| 6. Balance (minus net income). | ..... | 15. Total annual tax and surtax (Line 25, page 1). | ..... |
| 7. Loss. Line 4 (a), page 1. | | 16. Tax liability (if no tax liability, enter -0- on line 2 (a)).
Enter -0- if line 12 exceeds page 1 tax. | |
| 8. Personal credits. (From Schedule D-1. Give line 7.) | ..... |  |  |

ITEM C.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Description	3. Gross value prior to depreciation	4. Cost or other basis	5. Depreciation of value prior to depreciation as per Section 15(1), 1957	6. Depreciation of value prior to depreciation as per Section 15(1), 1957 subject to limit of Rs. 10,000/-	7. Cost or basis subject to limit of Rs. 10,000/-

Total area under the curve from time 0 to time 240 minutes = 8.

State the family, fiduciary, or business relationship to you, if any, of provider of any of the items on this page. If any of such items were acquired by you other than by purchase, explain fully how received.

66 Exhibit C-5 (Attached to Amended Motion)

Schedule M.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

(Date (1) name of business and address if different from name and address on page 1)	(2) number of places of business	(3) business activities
1. Total receipts		
COST OF GOODS SOLD		
(If he used above inventories are as follows: decreasing items)		
2. Inventory at beginning of year		
3. Merchandise bought for sale		
4. Labor		
5. Material and supplies		
6. Other costs (itemize below).		
7. Total of lines 2 to 6	\$	
8. Less inventory at end of year		
9. Net cost of goods sold (line 7 minus line 8)	\$	
10. Gross profit (line 1 minus line 9)	\$	
OTHER BUSINESS DEDUCTIONS		
11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself)		
12. Interest on business indebtedness		
13. Tax on business and business property		
14. Losses (explain below)		
15. Bad debts arising from sales or services		
16. Depreciation, amortization, and depletion (explain in Schedule J)		
17. Rent, repairs, and other expenses (itemize below or on separate sheet)		
18. Total of lines 11 to 17		
19. Total of lines 9 and 18		
20. Net profit (or loss) (line 1 minus line 19) (enter in item 8, page 1)	\$	

If the production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. Enter "P" or "M" on line 2 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17.

Schedule L.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

INCOME FROM PARTNERSHIPS, SYNDICATES, ETC. (See Instruction 9 (c)) (ENTER NAMES AND ADDRESSES)

INCOME FROM FIDUCIARIES (ENTER NAMES AND ADDRESSES)

INCOME FROM OTHER SOURCES (STATE NATURE)

Total amounts in Schedule L. (Enter as item 9, page 1)

Schedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

1. Kind of property (if buildings, state material of which constituted).	2. Date acquired	3. Cost of other items (if buildings, state total of other materials used in property).	4. Assets fully depre- cated or not as of end of year	5. Depreciation al- lowed (or allowable) in prior years	6. Remaining cost or other basis for depreciation	7. Estimated & estimated allowable depre- ciation for current year	8. Depreciation allowable this year
1 Story Brick 3424 Lawrence	7-37	\$50000 -		\$3500 -	\$5500 -	50	450 \$1000 -

AFFIDAVITE. (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed.)

I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including all accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this

day,

194

(Signature of person preparing the return)

(Signature of person preparing the return)

(Signature and title of attorney-in-fact, if any)

(Signature of tax preparer, if any)

(Name of law firm, employer, if any)

68 Exhibit C-6 (Attached to Amended Motion)

August

"I was in active service in the Army in 1945 and my
recomputed tax for 1948 is zero."

Herbie A. Gosselin

- (a) Obligations of the United States or of any agency or instrumentality thereof.
- (b) Obligations of the United States issued under the Loan Act.
- (c) Obligations of the United States issued on or before September 1, 1917.
- (d) Treasury Notes issued prior to December 1, 1948, Treasury Bills and Treasury Certificates of Indebtedness issued prior to March 1, 1947.
- (e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941.
- (f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941.
- (g) Dividends on shares outstanding in Federal savings and loan associations in case of shares issued prior to March 28, 1942.

(h) Total (enter as item 5(a), page 1).

- (i) Treasury Notes issued on or after December 1, 1948, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 5(b), page 1). \$0.00

All	.....	.....
All	.....	.....
None	.....	.....
None	.....	.....

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 6)

1. Kind of property	2. Amount	3. Description of use or deduction taken (check if applicable)	4. Renters (including lessees)	5. Other persons (including lessees)	6. Net profit (deductible losses carry forward to next year if any)
1 Story Brick 3434 Lawrence Ave	\$ 3000	- \$ 1000			\$ 2000 -

Explanation of deductions claimed in columns 4 and 5:

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 13, 14, 15, 16, AND 17. (See Instructions 12 and 13)

1. Item No.	2. Explanation	3. Amount	4. Item No. (continued)	5. Explanation (continued)	6. Amount

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 21 AND 22. (See Instructions 21 and 22)

(1) Personal Exemption

Number of dependents during the year in each status	Credit claimed	Number of dependents during the year in each status	Credit claimed
Single, or married and not living with husband or wife, and not head of family	18 \$ 500		
Married, living with husband or wife			
Head of family (see below)			

Reason for support if 18 years or over:

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 20)		
(1) If your net income is \$8,000 or less, take only this part of schedule		
Net income (item 19, page 1)		
Earned income credit (10% of net income, above)		

QUESTIONS

- Did you file a return for any prior year? Yes If no, what was the latest year? 1941 To which Collector's office was it sent? 1st 777
 - If a separate return was made for the current year, state:
 - Name of husband or wife
 - Personal exemption, if any, claimed thereon
 - Collector's office to which it was sent
 - Check whether the return was prepared on the cash [] or accrual [] basis.
- Was the rate of your salary or wages increased or decreased after October 3, 1942, and before the end of your taxable year? (Yes or no)
 - Did you receive during your taxable year any amount claimed to be nontaxable, other than interest reported in Schedule A (See Instruction 14)? No If no, attach schedule showing amount, nature, and amount of such income.
 - Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 381 of the Internal Revenue Code? No If no, attach statement required by Instruction K.

Exhibit C-6 (Attached to Amended Motion)

(69)

DETACH PAGES 2 AND 4 IF NOT USED.

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction 8) Page 8

1 Kind of property (if immovable, its location, if movable, its description)	2 Date acquired	3 Date sold	4 When made prior (including present)	5 Cost or other basis	6 Exempt from and not ex- empt from protection: re- quested in writing by January 1, 1913.	7 Description of property which may not be subject to protection by law in force at time of sale	8 Grade or kind of land or building and its dimensions	9 Name of place where located
Mr. Aug. Year	Mr. Aug. Year							

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN A MONTH

Total net long-term capital gain or loss (enter in line 3, column 1 of continuing ledger)

SUMMARY OF CAPITAL GAINS AND LOSSES

STATEMENT OF CAPITAL GAINS AND LOSSES	
1. Characteristics	2. Plus short-term capital gain or loss on real property held for less than 1 year (not in excess of net income for tax purposes), but only to extent of net short-term capital gains or losses per year.
1. Total net short-term capital gain or loss.	3. Net gains or loss to be taken into account from column 1B, except:
	(a) Gain (B) Loss
2. Total net long-term capital gain or loss.	4. Net gains or loss to be taken into account from previous statement and remaining trust funds.
	(a) Gain (B) Loss
3. Net gain in column 5, lines 1 and 2. (Enter as item 8 (a), page 1.)	5. Total net gains or loss taken into account by column 1B, plus or minus
4. Net loss in column 5, lines 1 and 2. (The amount to be entered as item 8 (a), page 1, is (1) this item or (2) net income, computed without regard to capital gains or losses, or (3) \$10,000, whichever is smaller.)	the amount in column 5, lines 1 and 2.

COMPOSITION OF ALTERNATIVE TAX

COMPUTATION OF ALTERNATIVE TAX
Use only if you had an excess of net long-term capital gain over net short-term capital loss, and Item 22, page 2, amounts \$10 or more.

- | | | | |
|---|--|-----|---|
| 1. Net income (Item 19, page 1) | | 8. | 10. Normal tax (8% of line 9) |
| 2. Excess of net long-term capital gains over net short-term capital loss (line 2, column 3 (a), minus line 1, column 3(b), of summary above) | | 9. | 11. Surplus on line 6. (See Instruction 20) |
| 3. Ordinary net income (line 1 minus line 2) | | 10. | 12. Partial tax (line 10 plus line 11) |
| 4. Less: Personal exemption. (From Schedule D-1) | | 11. | 13. 30% of line 2 |
| 5. Credit for dependents. (From Schedule D-2) | | 12. | 14. Alternative tax (line 12 plus line 13) |
| 6. Balances (minus net income) | | 13. | 15. Total marginal tax and surplus (Item 20, page 1) |
| 7. Less: Item 5 (a), page 1 | | 14. | 16. Tax liability (line 14 or line 15, whichever is the lesser). (Enter as Item 20, page 1) |
| 8. Earned income credit. (From Schedules E-1 or E-2) | | 15. | |
| 9. Balance subject to normal tax | | 16. | |

Schedule C.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS
(See Instruction 8)

Total net sales (in £m) (revenue at December 31, 2000 = £1.1)

Note the family, advertising, or business relationship to you, if any, of purchases of any of the items on this page if one of such items was purchased by another person.

70 Exhibit C-6 (Attached to Amended Motion)

Schedule H.—PROFIT OR LOSS FROM BUSINESS OR PROFESSION. (See Instruction H)

(1) name of business (2) number of places of business (3) business or
and address if different from name and address on page 1.

1. Total receipts.....

COST OF GOODS SOLD

(4) Is cost shown separately on income-producing factor? _____

2. Inventory at beginning of year.....

3. Merchandise bought for sale.....

4. Labor.....

5. Material and supplies.....

6. Other costs (specify below).....

7. Total of lines 2 to 6.....

8. Less inventory at end of year.....

9. Net cost of goods sold (line 7 minus line 8).....

10. Gross profit (line 1 minus line 9).....

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not included in "Labor" (do not deduct compensation for yourself).....

12. Interest on business indebtedness.....

13. Taxes on business and business property.....

14. Losses (explain below).....

15. Bad debts arising from sales or services.....

16. Depreciation, amortization, and depletion (explain in Schedule J).....

17. Rent, repairs, and other expenses (itemize below or on separate sheet).....

18. Amortization of emergency facilities (attach statement).....

19. Total of lines 11 to 18.....

20. Total of lines 9 and 19.....

21. Net profit (line 1 minus line 20) (enter as item 9, page 1).....

If the production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. Enter "C" or "PC" or "M" in boxes 2 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17.....

Did you at any time after October 3, 1942, and before the end of your taxable year have in your employ more than eight individuals?

If answer is "Yes," have you in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in rate after October 3, 1942? (If "No" to first question, if answer to second question is "Yes," attach a statement explaining all such increases or decreases. If you attach such increases or decreases required the prior approval of the National War Labor Board or the Commissioner of Internal Revenue as stated in Item 9, attach also a copy of the authorization for each of such increases or decreases.)

Schedule I.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

INCOME (OR LOSS) FROM PARTNERSHIPS, SYNDICATES, ETC. (SEE INSTRUCTION H (A) (2) (PARTNERS NAMES AND ADDRESSES))

INCOME FROM FIDUCIARIES (PARTNERS NAMES AND ADDRESSES)

INCOME FROM OTHER SOURCES (STATE NATURE)

Total amounts in Schedule I. (Enter as item 19, page 1)

Schedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

1. Kind of property (check one or more)	2. Date acquired	3. Cost or other basis (do not include land or other real property which may be depreciated)	4. Assets fully depreciated or used or sold during year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost of assets to be recovered	7. Estimated useful life of assets	8. Estimated depreciation per year	9. Depreciation claimed per year
1 Story Brick 3424 Lawrence	7-37	\$50000	-	\$4500	\$44500	50	\$44	\$1000

AMENDED
UNITED STATES

F.M. 0-7

1943

Page 1

FORM 1040
Internal Revenue Service**INDIVIDUAL INCOME AND VICTORY TAX RETURN**

OPTIONAL FORM 1040 MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR, OR IF MORE THAN SALARY AND COMMISSIONS WHOLLY OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES.

FOR CALENDAR YEAR 1943

At time you began _____, 1943, and ended _____, 1944

PRINT NAME AND ADDRESS PLAINLY. (See Instructions C)

THEODORE W. GOLDSTEIN

(Name) (Name of husband and wife, if this is a joint return)

415 Aldine Ave

(Street and number, or road name)

Chicago

Ill.

(City or town)

(State)

Member of Armed Forces AAF-W-3-T DETACHMENT 6
Company 42445, F-14-9 Serial Number 60112 MATTER HOLLOWAY

COMPUTATION OF NET INCOME**INCOME**

Labor, Wages,
and Compensation
for Personal
Services

(Number of
days from one
Instruction D)

Employee's Name _____
Service Pay \$ 3600.00 excluded

City and State _____

Column 1

Column 2

Income Tax Net Income

Victory Tax Net Income

Total _____

Less: Deductible expenses. (Attach detailed statement).
Compensation after deductible expenses _____

\$

\$

\$

\$

2. Dividends

3. Interest on corporation bonds, bank deposits, notes, etc.

4. Interest on Government obligations, etc.: (a) From line A (1), Schedule A.

(b) From line B (5) and (3), Schedule A.

5. Annuities

6. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule B).

\$

\$

\$

\$

\$

\$

(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule B).

7. Rents and royalties. (From Schedule C (1)).

\$ 150

\$ 150

8. Net profit (or loss) from business or profession. (From Schedule C (2)).

(State total receipts, from line 1, Schedule C (2) \$ _____)

9. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule C (3)).

10. Total income in items 1 to 9. _____

\$ 150

\$ 150

\$

\$

DEDUCTIONS

11. Contributions. (Capitalize in Schedule D).

\$ 50

\$

\$

\$

12. Interest. (Capitalize in Schedule D. See Instructions 13 and 16 for Victory Tax deduction).

\$

\$

\$

\$

13. Taxes. (Capitalize in Schedule D. See Instructions 13 and 16 for Victory Tax deduction).

\$

\$

\$

\$

14. Losses from fire, storm, shipwreck, or other casualty, or theft. (Capitalize in Schedule C).

\$

\$

\$

\$

15. Medical, dental, etc., expenses. (Capitalize in Schedule D).

\$

\$

\$

\$

16. Other deductions authorized by law. (Capitalize in Schedule D).

\$

\$

\$

\$

17. Total deductions in items 11 to 16. _____

\$ 50

\$

\$

\$

18. Income Tax net income (Item 10, col. 1, less item 17, col. 1).

\$ 100

\$

\$

\$

19. Victory Tax net income (Item 10, col. 2, less item 17, col. 2).

\$ 150

\$

\$

\$

INCOME AND VICTORY TAX

20. Unpaid balance of 1943 Income and Victory Tax (from line 22, page 4).

\$

\$

\$

\$

21. You may postpone, until not later than March 15, 1945, payment of the amount you owe up to one-half of item 19 (c), page 4. Enter the amount postponed. (For persons whose surtax net income for 1942 or 1943 exceeded \$20,000, see Schedule L-2).

\$

\$

\$

\$

22. Amount paid with this return (item 20 less item 21).

\$

\$

\$

\$

If the total of your payments (line 21 (d) on page 4) is larger than your tax (line 20 on page 4), enter the difference.

Indicate by a check mark (✓) what you want done with this overpayment: Refund it to me Apply it to my 1944 estimated tax

(Do not use three spaces).

File
CodeSerial
No.

Docket

(Cashier's Stamp)

I declare under the penalties of perjury that this return (including any accompanying schedules and extensions) has been prepared by me and to the best of my knowledge and belief is true and complete. *Theodore W. Goldstein* + *Chasine W. Goldstein* *9/23/44*
 (Signature of taxpayer) (Signature of taxpayer)
 My signature above was witnessed by _____
 (Signature of witness) _____
 (Address of witness) _____
 (Name of witness) _____
 (Address of witness) _____

3/15/44 to 9/23/44 on 1635-78-1316

72 Exhibit C-7 (Attached to Amended Motion)

"I was in active service in the Army in 1943 and my recomputed tax for 1948 is zero."

4. Schedule C

- (1) Units.
- (2) Loss: Wholly tax-exempt portion, principal amount net in excess of \$5,000.
- (3) Net taxable interest.
- (4) Obligations of instrumentalities of the United States issued prior to March 1, 1941 (other than Federal land bonds, Federal intermediate credit loans, or joint stock land bonds).
- (5) Dividends or share advances in Federal savings and loan associations in case of shares issued prior to March 28, 1942.
- (6) Subtotal for interest (total of items 3, 4, and 5).
- (7) Loss: Amortizable bond premium. (See Instruction 16.)
- (8) Balances of interest. (Enter as item 4 (a), column 1, page 1.)
- 5. Subject to normal tax, surtax, and Victory Tax:
- (1) United States savings bonds issued on or after March 1, 1941 (face price).
- (2) Other obligations issued on or after March 1, 1941, by the United States or any instrumentality thereof (include also Treasury notes issued on or after December 1, 1940).
- (3) Subtotal for interest (total of items 1 and 2). (Enter as item 4 (b), column 2, page 1).
- (4) Loss: Amortizable bond premium. (See Instruction 16.)
- (5) Balances of interest. (Enter as item 4 (b), column 1, page 1.)

Schedule B.—Schedule B (Form 1040) is a separate sheet and should be used in reporting gains and losses from sales or exchanges of capital assets and property other than capital assets, and filed with and as a part of this return.

Schedule C(1).—INCOME FROM RENTS AND ROYALTIES. (See Instruction 7)

1. Kind of property	2. Amount	3. Depreciation or depletion (explain below)	4. Repair (explain below)	5. Other expense (explain below)	6. Net profit (column 2 less columns 3, 4, and 5 (enter as item 7, page 1))
1 Story Brick 3424 Lawrence Ave	\$ 3150	0	\$ 1000	0	\$ 2150

Schedule C(2).—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

(State (1) nature of business and (2) business name)

1. Total receipts

COST OF GOODS SOLD

(To be used where inventories are not maintained for tax purposes)

Under the letters "A" or "B" or "M" on lines 2 and 3 if computations are based on either cost, or cost or market, whichever is lower.

2. Inventory at beginning of year

3. Merchandise bought for sale

4. Labor

5. Material and supplies

6. Other costs (explain below)

7. Total of lines 2 to 6

8. Less inventory at end of year

9. Net cost of goods sold (line 7 less line 8) (a)

10. Gross profit (line 1 less line 9)

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN COLUMN 3 AND LINE 16, ABOVE

1. Kind of property (if building, state material of which constructed)	2. Date acquired	3. Cost for which basis (for tax and book) has been taken (or other method of valuing property)	4. Amort. fully depre- ciated in year of end of year	5. Depreciation al- lowed (or allowable) in prior years	6. Remaining cost of other basis to be depreciated	7. Estimated life remaining for tax depre- ciation	8. Estimated annual allowable depre- ciation per year	9. Estimated allowable depre- ciation per year
1 Story Brick 3424 Lawrence Ave	7-37	\$ 60000	\$ 0	\$ 55000	\$ 5000	50	\$ 1000	\$ 6000

EXPLANATION OF DEDUCTIONS CLAIMED IN COLUMNS 4 AND 8, AND LINES 8, 14, AND 17, ABOVE

1. Column 4 Line No.	2. Explanation	3. Amount	4. Column 8 Line No.	5. Explanation	6. Amount

Schedule C(3).—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES. (See Instruction 9)

Name and address of partnership, syndicate, etc.

Name and address of fiduciary

Other income (state nature)

Total (enter as item 9, page 1)

Amount

Exhibit C-7 (Attached to Amended Motion)

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Schedule D.—CONTRIBUTIONS. (See Instruction 11)

1. Name and Address of Agent/Consultant
Agent/Consultant

Total. (Enter on page II, page 9, subject to page 1, limited to one)

Schedule F.—TAXES. (See Instruction 13.)

4. *Scutellaria* (Linn.)

Total. (Same as item 11, page 1)

Schedule II.—MEDICAL, DENTAL, ETC. EXPENSES. (See Instruction 15)

al., etc., expenses actually paid during

- Total medical, dental, etc., expenses actually paid during the year as shown in column 3, above
 - Amount received during the year as compensation for such expenses
 - Payment for medical care not compensated for during the year (line 1 less line 2)
 - Total amount in item 10, page 1
 - Total deduction claimed in items 11, 12, 13, 14, and 16, page 1
 - Net income before deduction for medical, dental, etc., expenses (line 4 less line 5)
 - 3% of item 6
 - Entered line 1 over line 7. (Enter as item 15, page 1, subject to maximum limitation.) (See

Schedule I.—PERSONAL EXEMPTION AND CREDIT FOR DEPENDENTS. (See Tax Computation Instructions.)

(1) Personal Exemption		(2) Credit for Dependents			
Status	Number of dependents during the year in each status	Credit claimed	Place of Abode and Relationship	Number of months during the year	Credit claimed (Head of a family may claim credits for dependents used to publicly support or board a head of a family)
Single or married and not living with husband or wife, and not head of family	18	\$ 500		Under 18 years old	
Married and living with husband or wife				18 years or over	
Head of a family (explain below)					

Schedule J.—COMPUTATION OF EARNED INCOME CREDIT. (See Computation Form.)

- (B) If your net income is MORE than \$3,000,
see only this part
of schedule

Net income (item 18, page 1).	\$100	Earned net income (not more than \$14,000).	\$
Saved income credit (10% of net income, above).	\$10	Net income (item 18, page 1).	\$

1. Did you file a return for any prior year? YES. If so, what was the latest year? 1948. To which Collector's office was it sent? DETROIT.

2. If you claimed credit for tax paid in line 21 (c), page 4, to which Collector's office was your declaration sent? DETROIT.

3. If separate return was made for the current year, status:

 - (a) Name of husband or wife _____
 - (b) Personal description, if any, claimed thereon _____
 - (c) Collector's office to which it was sent _____

4. Check whether this return is:

 - Federal
 - State
 - Local
 - Foreign

QUESTIONS

3. Was the rate of your salary or wages increased or decreased during your taxable year? (Yes or No) _____

6. Did you receive during your taxable year any amount claimed to be non-taxable (see General Instruction 19) \$10? If so, attach schedule showing source, nature, and amount of such income.

7. Did you at any time during your tenure own (directly or indirectly) any stock of a bank, corporation, or a personal holding company as defined by section 407 of the Internal Revenue Code? _____.

74 Exhibit C-7 (Attached to Amended Motion)

COMPUTATION OF INCOME AND VICTORY TAX. (See Tax Computation Instructions)

1. Income Tax net income (Item 18, page 1).	\$ 2150
2. Less Personal exemption. (See Schedule I-1B.)	\$ 624
3. Credit for dependents. (See Schedule I-2B.)	\$ 1800
4. Balance (income net income).	\$ 406
5. Less: Certain interest on Government obligations (Item 4 (a), page 1).	\$ 100
6. Earned Income credit. (See Schedule J-1D or J-2B.)	\$ 110
7. Balance subject to normal tax.	\$ 1966
8. Normal tax (5% of line 7).	\$ 98
9. Surtax on amount in line 4. (See Form Table, page 3 of Instructions.)	\$ 80
10. Total Income Tax (line 8 plus line 9). (If Schedule B is used and alternative tax computation made, enter line 14; Schedule B.)	\$ 2001
11. Less: Income Tax paid to a foreign country or U. S. possession. (Attach Form 114B.)	\$ 1991
12. BALANCE OF INCOME TAX.	\$ 87
13. NET VICTORY TAX (line 6 of Victory Tax Schedule, below).	\$ 545
14. Total of lines 12 and 13.	\$ 0
15. Income Tax paid at source on tax-free covenant bond interest. (See Footnote 1.)	\$ 340
16. Line 14 less line 15.	\$ 531
17. Income Tax for 1942. (See Statement, FORM 1142, VICTORY TAX FOR 1942) (Line 14 plus line 15)	\$ 531
18. Enter line 16 or 17 whichever is LARGER. (Members of the armed forces see page 4 of Instructions.)	\$ 531
19. FORGIVENESS FEATURE (Don't fill in (a), (b), and (c) below, if either line 16 or 17 is \$30 or less):	
(a) Enter line 16 or 17, whichever is SMALLER.	\$ 340
(b) Enter \$50 or three-fourths of (a), immediately above, whichever is LARGER. This is the FORGIVEN part of the tax.	\$ 881
(c) Enter the UNFORGIVEN part of the tax which is the BALANCE (subtract (b) from (a)). (See Footnote 2.)	\$ 0
20. TOTAL INCOME AND VICTORY TAX. (Total of lines 18 and 19 (c))	\$ 87
21. Less:	
(a) Income and Victory Tax withheld by employer	\$ 0
(b) Income Tax paid on 1942 income.	\$ 0
(c) Tax paid on 1943 income on account of Declaration of Estimated Tax.	\$ 0
\therefore Total payments.	\$ 0
22. UNPAID BALANCE OF INCOME AND VICTORY TAX. (If line 20 is larger than line 21 (c), enter the difference here and also as item 20, page 1; if not, see item 23, page 1).	\$ 438

FOOTNOTE 1.—If you claim a credit in line 18, disregard lines 19(a) and (b); complete Schedule L-1 on page 4 of Instructions, and enter result in line 19. Attach completed schedule.

FOOTNOTE 2.—If your return net income for 1943 or 1942 exceeded \$20,000, requiring you to complete Schedule L-2, enter here the amount shown in line 27 of such schedule, 0, and increase line 19 (c) by such amount.

Schedule K.—VICTORY TAX. (See Tax Computation Instructions)

1. Victory Tax net income (Item 19, page 1).	\$ 2150
2. Less: Specific exemption (\$624 if return reports income of only one person; otherwise, see Instructions, page 3).	\$ 624
3. Income subject to Victory Tax (line 1 less line 2).	\$ 1526
4. Victory Tax before credit (5% of line 3).	\$ 76
5. Victory Tax credit:	
(a) Single person, or married person not living with husband or wife: 25% (plus 2% for each dependent) of line 4, but not more than \$300 (plus \$100 for each dependent).	\$ 19
(b) Married person living with husband or wife if separate returns are filed: 40% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent).	\$ 0
(c) Married person living with husband or wife if only one return or a joint return is filed, or head of a family: 40% (plus 2% for each dependent) of line 4, but not more than \$1,000 (plus \$100 for each dependent). (See Schedule I-2(2), for exclusion of one dependent by head of a family).	\$ 57
6. Net Victory Tax (line 4 less line 5). (Enter in line 13, above).	\$ 0

Schedule L—To be used only by individuals whose net income for 1942 or 1943 exceeded \$20,000.
Schedule to determine whether Section 6 (c) of the Current Tax Payment Act of 1943 is applicable

1. Surtax net income for 1942 (Item 23, Form 1040 (1942)).	\$
2. Surtax net income for 1943 (line 4, above).	\$
3. Surtax net income for base year, 8. plus \$20,000: 8. (Check year used: 1937, 1938, 1939, ..., 1940, ...).	\$

If either line 1 or 2 is greater than line 3, separate Schedule L-2 should be secured from the collector and filed with and as a part of this return.

Note: If a joint return is filed for either 1942 or 1943 and separate returns for the other or each person, enter the aggregate of the separate net incomes for the separate returns prior. The net tax income to be entered in line 3 shall be determined in the same manner as the sum of incomes entered in lines 1 or 2, whichever is the lower.

EXHIBIT D.

State of Illinois }
County of Cook } ss:

AFFIDAVIT.

Edward H. Wait, being first duly sworn on oath, deposes and says:

That on or about April 16, 1941 this affiant caused an order for envelopes and letterheads for the Bon Air Country Club to be placed with the Waukegan Post, Inc., located in Waukegan, Illinois, which corporation was engaged in publishing a newspaper and also the printing business.

Affiant further states that on or about July 8, 1941, the Waukegan Post, Inc., addressed an invoice to the Bon Air Country Club which invoice stated the merchandise ordered, the price of the merchandise and the date that the merchandise was ordered, namely, April 16, 1941; payment of the invoice was not made to the Waukegan Post, Inc., because of a controversy concerning the price and failure to deliver the merchandise ordered.

Affiant states that a proceeding in Debt was instituted in October, 1941, before Harry Hoyt, Justice of the Peace of Lake County, Illinois, wherein the Waukegan Post, Inc., was plaintiff and Bon Air Catering, Inc., was defendant; summons was issued October 7, 1941 and was returnable on October 14, 1941; judgment was rendered in favor of the plaintiff in the sum of \$57.60; subsequently this judgment was satisfied upon delivery of the merchandise.

Affiant states the invoice above referred to was the only invoice rendered to the Bon Air Country Club or the Bon Air Catering, Inc., by the Waukegan Post, Inc., that resulted in litigation or judgment in any court to the best of my knowledge.

Affiant states that he was associated with the management of, and has had charge of and full knowledge of the ordering and receipt of merchandise for the Bon Air Country Club and the Bon Air Catering, Inc. from the inception of business operations in May, 1938, until January, 1942.

Attached hereto is a photostatic copy of the invoice referred to herein which is marked Exhibit D. (Affiant

states that the pencil notations appearing on the invoice were made subsequent to receiving it.)

Affiant further sayeth not.

Edward H. Wait

Subscribed and sworn to before me this 2nd day of December A.D., 1944.

(Seal)

S. R. Hoffman,
Notary Public.

(Billhead of)

THE WAUKEGAN POST
WAUKEGAN, ILLINOIS

Bon Air
Wheeling, Ill.

July 8, 1941

Our Order No. 8727

Date	Description	Charge	Credit	Balance
4-16	5000 Letter heads #1956	21.25		
16	2500 Envelopes #1954	15.75		
16	2500 Envelopes #1955	20.60		57.60
	<i>Hoyt 12.00</i>			

— EXHIBIT E-1.

State of Illinois }
County of Cook } ss:

AFFIDAVIT.

I, Frank Sampson, upon oath being duly sworn, depose and say as follows:

That I have known William Goldstein, an attorney, with offices located at 140 North Dearborn Street, in the City of Chicago, State of Illinois, for approximately the past thirty-eight years; that on or about the 15th day of September 1941 I discussed with William Goldstein the leasing of the property commonly known as the Albany Park Bank Building at 3422-24 Lawrence Avenue, Chicago, Illi-

nois; that after several discussions with William Goldstein I entered into a lease on the 29th day of September 1941 wherein the parties to said lease were Theodore Goldstein by William Goldstein, Agent, as Lessor, and Hines Realty and Construction Company by F. Sampson, President, as Lessee; that the said lease was for the period commencing on September 29, 1941 and expiring on September 30, 1946, at a monthly rental of Two Hundred and Fifty (\$250.00) Dollars to and including September 30, 1943, and Three Hundred (\$300.00) Dollars per month for the remaining period. Affiant further states that I have paid to the said William Goldstein as agent for Theodore Goldstein the monthly rental each and every month in accordance with the terms and covenants of the aforementioned lease up to and including the month of September, 1944.

This affiant further states that it has been the general custom of William Goldstein to come to the Albany Park Bank Building each month for the collection of the monthly rental. On some occasions, however, Goldstein requested me by telephone to mail him the rental check; that William Goldstein has never at any time during my numerous conversations with him regarding the Albany Park Bank Building stated to me that William R. Johnson had any right, title or interest in the Albany Park Bank Building.

That during the month of November 1943 I stated to William Goldstein that I was interested in the organization of a bank to be operated on the premises of the Albany Park Bank Building and that I was desirous of obtaining from him a lease for a longer period of time than the lease which was in existence and which expired on the 30th day of September 1946. I explained to William Goldstein that it would be necessary for me to have an option to renew the present lease for an additional period of ten years before I could attempt to organize a bank in accordance with the requirements of the State of Illinois. Mr. Goldstein responded by stating that it was not necessary for me to have an option of renewal as I could stay in possession of the premises as long as I wished. I explained to him that it would be necessary for me to have the option of renewal in writing. Goldstein replied by stating that he could not give me an option for extension at that time: that I would have to wait until the court ruled in the "Johnson case" which was then pending before Judge Barnes. I then asked Goldstein if Johnson had anything

to do with the property. Goldstein replied, "Johnson never had any interest in the property and has nothing whatever to do with it." I discussed the question of an option for an extended period of time with Mr. Goldstein on five or six occasions between November 1943 and January 1, 1944. During the latter part of December 1943, in discussing the matter of an option for an extended period of time, William Goldstein suggested that I prepare a lease in conformity with my ideas on the matter. I prepared the said lease and submitted the same to William Goldstein; at that time I explained to William Goldstein that it would also be necessary for me to have the lease signed by his son, Theodore Goldstein, who was owner of the property rather than William Goldstein, as agent, as was done with the five (5) year lease. Affiant further states that William Goldstein told me that his son Theodore was in the Armed Forces of the United States and that it would be necessary for him to bring the lease to his son Theodore for the purpose of having Theodore place his signature on the lease. Goldstein said that he and his wife were going to Hot Springs, Arkansas, and that his son was stationed close by and while visiting there he would visit with his son and obtain his signature to the lease. On the 3rd day of January 1944 William Goldstein presented to me a lease in which the Hines Realty and Construction Company is Lessee, of which corporation I am President, and Theodore Goldstein is Lessor, for the premises commonly known as the Albany Park Bank Building, for a term of ten (10) years beginning on the 1st day of October 1946 and ending on the 30th day of September 1956, at a monthly rental of Three Hundred (\$300.00) Dollars. The said lease provides that the Hines Realty and Construction Company, as Lessee, agrees to deposit with the Lessor, Theodore Goldstein, the sum of Six Thousand (\$6,000.00) Dollars to be held as security for the payment of the rent for the last twenty (20) months under the terms thereof, provided that said money shall be used by Theodore Goldstein to pay the said sum of money upon the delinquent general real estate taxes past due upon the Albany Park Bank Building property: that the said lease further provides that the Lessee shall have the right to assign the said lease upon the formation of a bank prior to July 15, 1944.

Affiant further states that on or about the 10th day of July, 1944 he discussed with William Goldstein the terms

and conditions of the option of renewal entered into on the 3rd day of January, 1944; wherein this affiant was given a ten (10) year option of renewal from Theodore Goldstein for the premises known as the Albany Park Bank Building, provided that this affiant open a bank on the premises or before the 15th day of July, 1944. This affiant realizing that he would be unable to open a bank on or before the 15th day of July 1944 requested William Goldstein, as duly authorized agent for Theodore Goldstein, the owner of the premises, to extend the time limitation of July 15, 1944 to September 15, 1944; that on the 13th day of July, 1944 William Goldstein, as duly authorized agent for Theodore Goldstein, addressed a letter to this affiant wherein William Goldstein, as the agent for Theodore Goldstein, extended the time limitation to this affiant for the opening of the bank to the 15th day of September, 1944.

I further state that I have read all of the foregoing statements contained in this affidavit and I make these statements of my own free will and volition and without any promises, coercion, or consideration to me of any kind whatsoever.

Affiant further sayeth not.

This affidavit consists of three and a half pages.

F. SAMPSON.

Frank Sampson personally appeared before me this 13 day of October A.D. 1944, and under oath states that the foregoing statements are true and correct, and that I, Katherine Kezerci, a Notary Public, for the state above mentioned, saw him subscribe his name above.

Katherine Kezerci,
(Seal) Notary Public.

My commission as a Notary Public expires 10/4/46.

EXHIBIT E-2.

This Agreement, Made this 3rd day of January A. D. One Thousand Nine Hundred Forty-four (A. D. 1944). Between Theodore Goldstein, party of the first part, and Hines Realty & Construction Co., an Illinois corporation, party of the second part.

Witnesseth, That the said party of the first part does hereby lease to the said party of the second part, the following described property, situated in the City of Chicago, County of Cook and State of Illinois, viz: One Story stone and brick building located at north east corner of Lawrence Avenue and Bernard Streets, commonly known as 3424 Lawrence Avenue, Chicago, Illinois, including balcony, basement, all safe deposit boxes, and all vaults, bank fixtures, furniture, locks, doors, and all other equipment now located in or upon said premises.

for the term Ten Years beginning the First day of October A. D. 1946, and ending the Thirtieth day of September A. D. 1956.

And the party of the second part agrees to pay as rent for said premises, the sum of Thirty Six Thousand and 00/100 Dollars. Payable in payments as set forth in Rider hereto attached as Exhibit "A" and expressly made a part hereof.

And the party of the second part covenants with the party of the first part, that at the expiration of the term of this lease he will yield up the premises to the party of the first part without further notice, in as good condition as when the same were entered upon by the party of the second part, loss by fire or inevitable accident, and ordinary wear excepted; and will pay all assessments that shall be levied upon said premises during said term for water tax.

And the said party of the second part further covenants that it will permit the party of the first part to have free access to the premises hereby leased for the purpose of examining or exhibiting the same, or to make any needful repairs or alterations of such premises, which said first party may see fit to make; also to allow to have placed upon said premises, at all times, notice of "For Sale" or "To Rent" and will not interfere with the same.

It Is Further Agreed, by the said party of the second part that neither it nor its legal representatives will make any alterations, amendments or additions to the buildings on said premises, without the written assent of the party of the first part had thereto, and that neither it nor its legal representatives will use said premises for any purpose calculated to injure or deface the same, or to injure the reputation or credit of the premises or of the neighborhood.

It is further agreed by the party of the second part that he will keep said premises in a clean and healthy condition, in accordance with the ordinance of the City, and the directions of the Board of Health and Public Works.

And the party of the second part covenants that the said premises will be occupied for general real estate business, rental of safe deposit boxes, insurance, currency exchange, finance, banking, travel bureau and/or any other lawful business. And the party of the second part shall have the right to sub-let or assign all or any portion of said premises subject only to the terms and provisions of this lease and providing that party of the second part shall remain liable for the full rental herein prescribed.

And it is Further Expressly Agreed, between the parties, that if default shall be made in the payment of the rent above reserved, or any part thereof, or in any of the covenants or agreements herein contained, to be kept by the party of the second part its heirs, executors, administrators or assigns, it shall be lawful for the party of the first part, or his legal representatives to enter into and upon said premises, or any part thereof, either with or without process of law, to re-enter and re-possess the same, and to distrain for any rent that may be due thereon, at the election of said party of the first part; and in order to enforce a forfeiture for non-payment of rent, it shall not be necessary to make a demand on the same day the rent shall become due, but a demand and refusal or failure to pay at any time on the same day, or at any time on any subsequent day, shall be sufficient; and after such default shall be made, the party of the second part, and all persons in possession under it shall be deemed guilty of a forcible detainer of said premises under the statute.

In Witness Whereof; the parties hereunto set their hands and seals; the day and year first above written.

Theodore Goldstein (Seal)

Hines Realty & Construction Co. (Seal)

By: Frank Sampson (Seal)
President

Attest:

Maxine Optine,
Secretary.

EXHIBIT "A"

This RIDER IS ATTACHED TO AND MADE A PART OF
LEASE DATED JANUARY 3rd, 1944, BETWEEN THEO-
DORE GOLDSTEIN, AS LESSOR, AND HINES REALTY &
CONSTRUCTION CO., AS LESSEE.

Three Hundred Dollars (\$300.00 on October 1st, 1946, and Three Hundred Dollars (\$300.00) on the first (1st) day of each month thereafter for one hundred-twenty (120) months succeeding, with the exception upon the establishment of a bank which shall go into and take possession of said premises or any part thereof, party of the second part agrees that at the time such bank shall open for business, it will deposit with the party of the first part the sum of Six Thousand Dollars, \$6000.00) to be held as security for the payment of the rent reserved to be paid during the last twenty months accrued under the terms thereof, provided however, that said money, shall be used by the party of the first part to pay off all accrued and delinquent and general taxes then due and outstanding against the demised premises. It is understood and agreed that the time such payment of Six Thousand Dollars (\$6000.00) be required to be paid by the party of the second part, mutual and satisfactory arrangements will be worked out so as to apply said sum against the unpaid taxes as above provided.

And party of the second part covenants that it will maintain the building on said premises and make all necessary expenditures except general real estate taxes and special assessments.

And the party of the second part covenants that it will pay all personal property taxes hereafter levied upon furniture or equipment located in or upon said premises.

And party of the second part shall have the right to attach or affix any sign or signs in or upon said premises or any portion thereof, interior or exterior, as it may see fit.

And party of the second part shall not be required to insure said premises against fire or extended coverage, nor shall it be required to pay premiums upon any of said insurance placed by said party of the first part, but however, the party of the second part shall be required to carry and pay for public liability and plate glass insurance and to furnish party of the first part with policies for same.

And party of the second part covenants and agrees to maintain the exterior and interior and the roof on said premises. And the parties hereto agree that this lease will be null and void if a bank is not operating in said premises by July 15, 1944.

And the party of the first part hereby covenants and agrees in the extent the bank is established in said premises to consent to the underletting of said premises or any part thereof and assignment of following named lease, notwithstanding anything to the contrary in that lease dated September 29, 1941, entered into by the parties hereto on the said premises.

Theodore Goldstein
Theodore Goldstein
Hines Realty & Construction Co.
By Frank Sampson,

President.

Attest,

Maxine Optine,
Secretary.

(Reverse side of foregoing lease)

LEASE:

to

Amount per Annum, \$

Payable

Received on the within Lease the sums set opposite the following months for the years 19— and 19—.

19	May	\$
	June	
	July	
	August	
	September	
	October	
	November	
	December	
19	January	
	February	
	March	
	April	

GUARANTEE

For value received hereby guarantee the payment of the Rent and the performance of the covenants and agreements of the party of the second part in the within lease, in manner and form as in said Lease provided.

Witness..... hand....and seal....this.....day of
A. D. 19.....

(Seal)

ASSIGNMENT AND ACCEPTANCE

For value received..... hereby assign all..... right, title and interest in and to the within Lease unto heirs and assigns; and in consideration of the consent to this assignment by the Lessor..... guarantee the performance by said..... of all the covenants on the part of the second party in said Lease mentioned.

(Seal)

In consideration of the above assignment and the written consent of the party of the first part thereto, hereby assume and agree to make all payments and perform all the covenants and conditions of the within Lease, by said party of the second part to be made and performed.

Witness..... hand.... and seal.... this..... day of
A. D. 19.....

(Seal)

(Seal)

CONSENT TO ASSIGNMENT

..... hereby consent to the assignment of the within Lease to

on the express condition, however, that the assignor shall remain liable for the prompt payment of the rent and performance of the covenants on the part of the second party as therein mentioned, and that no further assignment of said Lease or subletting of the premises or any part thereof shall be made without.....written assent first had thereto.

Witness..... hand... and seal.—this day of
A. D. 19.....

(Seal)

LESSOR'S ASSIGNMENT

In consideration of One Dollar, to..... in hand paid,
hereby transfer, assign and set over to.....
and assigns
interest in the within Lease, and the rent
thereby secured

Witness..... hand... and seal.... this day of
A. D. 19.....

(Seal)

(Seal}

Piled
Dec. 7,
1944

40 On the 7th day of December, 1944, the Government filed a notice and Government's answer to defendants' amended motion for a new trial, which said notice and Government's answer were in words and figures as follows, to-wit:

41 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

United States of America

vs.

William R. Johnson

and

United States of America

vs.

Jack Sommers, James A. Hartigan,
John M. Flanagan, William P. Kelly
and Stuart Solomon Brown.

No. 32168

No. 32168

NOTICE.

To: Harold R. Schradzke,
33 North La Salle Street,
Chicago, Illinois

Homer Cummings,
1616 K Street, N. W.,
Washington, D. C.

William J. Dempsey,
Bowen Building,
Washington, D. C.

You Are Hereby Notified that the undersigned has this day filed with the Clerk of the District Court for the Northern District of Illinois its Answer to Defendants' Amend-

ed Motion for New Trial, copy of which Answer and exhibits thereto attached is herewith served upon you.

(Sgd) J. Albert Woll,
United States Attorney.

Received a copy of the foregoing Notice and Answer and exhibits therein referred to this 7th day of December, A. D. 1944.

(Sgd.) Harold R. Schradzke.

42 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32168)

Filed
Dec. 7
1944

**GOVERNMENT'S ANSWER TO DEFENDANTS'
AMENDED MOTION FOR NEW TRIAL.**

This case is now before this Court on Defendants' Amended Motion for a New Trial based on the contention that William Goldstein, a Government witness, perjured himself at Defendants' trial. After this Court denied Defendants' original Motion and the Circuit Court of Appeals affirmed its action in that connection, the Defendants filed a Petition for Certiorari in the Supreme Court. Shortly before the convening of the 1944 term of that Court and while the Petition for Certiorari was pending, counsel for the defendants requested the Government to inform the Supreme Court that Theodore Goldstein, William Goldstein's son, had recently filed income tax returns covering the rentals from the Albany Park Bank Building. As this Court will recall, at defendants' trial William Goldstein testified that he purchased this property at the request of the defendant, William R. Johnson, with money furnished by Johnson.

43 The title was taken in the name of his son, Theodore Goldstein, and a quit-claim deed to the property was subsequently delivered to Johnson. Through an investigation conducted by the Bureau of Internal Revenue, we verified the fact that the returns had been filed by Theodore Goldstein and, also, ascertained the circumstances under which they were filed. We obtained our information on the subject principally from an affidavit by Stanley A. Wod-

rick, Deputy Collector of the Internal Revenue, which was in question and answer form and is attached hereto as Government's Exhibit 3. While we believe that the circumstances under which the returns were filed were such as to dissipate any significant relevance the filing of the returns might otherwise have had, the Solicitor General, nevertheless acceded to the defendants' request that the Supreme Court be advised of the filing of the returns. This was done in a Supplemental Memorandum in which we informed the Court of the filing of the returns and of the circumstances under which they were filed. The Supreme Court declined to consider any of this information on the ground that it was not a part of the record and, on motion of the defendants, postponed consideration of the Petition for Certiorari, with the result that a Motion for Remand was filed in, and granted by, the Circuit Court of Appeals.

The Defendants' Amended Motion for a New Trial is based principally upon the contention that the filing of these income tax returns by Theodore Goldstein proves that William Goldstein committed perjury at their trial. This Court now has the returns before it. Affidavits showing the circumstances under which the returns were filed are attached hereto and incorporated herein as Government's Exhibits Nos.:

- I., being an affidavit of Theodore Goldstein, which has attached thereto as Exhibits I(a) and I(b) copies of income tax returns for the years 1941 and 1942;
- II. being an affidavit of William Goldstein, which was attached thereto as Exhibit II(a) a typewritten communication concerning which Goldstein in his affidavit states he did not sign, and II(b) a letter to Carter H. Harrison, dated June 13, 1944, which Goldstein in his affidavit states he did sign;
- 44 III. being a question and answer affidavit signed by Stanley A. Wodrick on August 12, 1944;
- IV., being an affidavit of Stanley A. Wodrick, signed by him on December 7, 1944;
- V., being an affidavit of Edward H. Schulz, signed by him on December 7, 1944, and which has attached thereto as Exhibit V(a) a photostatic copy of a written communication which Mr. Schulz in his affidavit states he received from the Chief Field Deputy of the Treasury Department of the Internal Revenue Bureau.

The affidavits speak for themselves, support and amplify our statements to the Supreme Court, and plainly show that the filing of income tax returns by Theodore Goldstein covering the rentals from the Albany Park Bank Building in no way tends to prove that William Goldstein committed perjury at defendants' trial. On the contrary, the evidence now before the court corroborates the Court's original conclusion that Goldstein did not perjure himself.

Defendants also rely in their Amended Motion upon two affidavits regarding other, unrelated matters, for the most part. The Sampson affidavit is merely cumulative of matters before this Court on the defendants' original motion for new trial. The statements attributed to Goldstein by Sampson in his affidavit have been directly denied by William Goldstein in his affidavit (Government Exhibit II). The Wait affidavit, which most certainly is not newly discovered evidence, is so obviously remote from any issues before the Court on this Motion as to require no comment.

On the basis of the affidavits submitted herewith, which make these additional matters a part of Court record, we respectfully submit that there is no merit to defendants' Amended Motion for a New Trial and that the Motion should be denied.

Respectfully submitted,

(Sgd) Samuel O. Clark, Jr.,
Assistant Attorney General.

(Sgd) J. Albert Woll,
United States Attorney.

45

GOVERNMENT'S EXHIBIT NO. 1.

State of Illinois, } ss.
County of Cook. }

AFFIDAVIT.

Theodore W. Goldstein, being first duly sworn on oath, deposes and says:

1. That he is 32 years of age and that he lives at 415 Aldine Avenue, Chicago, Illinois, with his parents William and Rose Goldstein and is presently employed by the Ordnance Department of the United States Government.

Exhibit 1 (Attached to Answer)

2. That from the Fall of the year 1931 until the Spring of 1933 he was a student at the University of Illinois, Champaign, Illinois, and that from the Fall of the year 1933 until the Spring of the year 1935, he was a student at Knox College, Galesburg, Illinois, and that in the Fall of the year 1935 he enrolled as a law student at the Loyola University School of Law at Chicago, Illinois, and that he graduated from that law school in the Spring of 1938; that during this period he was not gainfully employed, except during the years 1935 to 1938 inclusive, when he secured part time employment while attending the University of Loyola; that the income derived from the part time employment was spent by affiant in helping defray his expenses at Loyola University.

3. That he is title holder of record to the property located at 3424 Lawrence Avenue in the City of Chicago, upon which property is located a building known as the Albany Park Bank Building; that while he is the title holder of record, he is not the actual owner of this property and does not have, and never did have any beneficial or financial interest, or any interest of any kind in that property; that he did not purchase the property and did not spend any funds for its purchase, and did not have anything whatever to do with the purchase of that building,

46 and that this property was not purchased for him in any manner by anyone; that he does not now and never has claimed any interest in this property or any income or any interest in any income derived from this property, and has not at any time received any rents, interest, profits, or any other income, whatever, from this property.

4. That he has never regarded himself as the actual owner of the property and has never regarded himself as entitled to any rentals or other income from this property. In this connection, affiant states that he filed income tax returns with the Collector of Internal Revenue for the years 1941, 1942, and 1943. That in these returns he did not claim as income any rentals or other income from the property at 3424 Lawrence Avenue, Chicago, Illinois, for the reason that he did not then and did not at any time regard that property as his or regard himself as entitled to any income from this property, and for the further reason that he did not, in fact, receive any income from this property. Affiant further states that copies of the income tax returns covering the years 1941 and 1942 are attached to this affidavit and made a part hereof, and that these

copies are true and correct copies of the returns for those years filed by him with the Collector of Internal Revenue.

5. That in the summer of this year affiant affixed his signature to delinquent income tax returns for the years 1937 to 1940, inclusive, and to amended income tax returns for the years 1941, 1942, and 1943; that he has examined these returns which appear as exhibits in the defendants' amended motion for a new trial in the case of United States v. William R. Johnson, et al., and that the returns appearing as exhibits in the defendants' amended motion for a new trial are true and correct copies of the delinquent and amended income tax returns which he signed in the summer of this year.

47 6. That affiant signed these delinquent and amended returns under the following circumstances:

That affiant's father, William Goldstein, told affiant that the Internal Revenue Department was insisting that returns be filed by affiant as the title holder of record to the property in question, and that affiant's father, William Goldstein, told affiant that he had fully explained to the Internal Revenue Department that the affiant was merely the record title holder of the property in question and had no actual interest in the same, and that affiant's father, William Goldstein, told affiant that the Internal Revenue Department was fully advised by him of the fact that the affiant was merely the record title holder and had no interest in the property or its rents, issues, or profits, but that the Internal Revenue Department had nevertheless insisted that as record title holder, affiant was required to file delinquent and amended returns for the property in question, and that, unless such returns were filed, an assessment would immediately be made against the affiant.

7. Affiant further states that upon this information being given him by his father, he signed the returns, despite the fact that he did not claim any interest in the property or any income derived from the property and, in fact, was not the actual owner of the building and did not receive any profits or other income, whatever, from the property in question.

(Sgd.) Theodore W. Goldstein.

Subscribed to and sworn to before me this 7th day of December, A. D. 1944.

(Sgd.) Anna L. Minahan,
Notary Public.

FORM 1040-A
INDIVIDUAL INCOME TAX RETURNCHICAGO,
UNITED STATES

1941

INDIVIDUAL INCOME TAX RETURN
THIS RETURN MAY BE FILED INSTEAD OF FORM 1040 BY
CITIZENS OR RESIDENT ALIENS IF GROSS INCOME
IS NOT MORE THAN \$3,000 AND IS ONLY
FROM SOURCES STATED HEREON

PRINT NAME AND HOME OR BUSINESS ADDRESS PLAINLY BELOW

Theodore William Goldstein
(Name) (Use given name of both husband and wife, if this is a joint return)415 Algonquin Ave.
(Business number, if used name)Chicago Cook Illinois
(State or city) (County) (State)

Occupation Attorney

Do not write in these spaces.

1034709

NET

(Collector's Stamp)

Cash-Cheque-R. O.

DEPENDENTS ON LAST DAY OF YEAR

List persons deriving their chief support from you (other than husband or wife) under 18 years of age or mentally or physically incapable of self-support

Name of dependent	Relationship	Under 18 years of age or over, give reason for listing

GROSS INCOME LESS ALLOWANCE FOR DEPENDENTS

1. Salary, wages, and compensation for personal services
2. Dividends, interest; rent, annuities, and royalties
3. Total
4. Less: \$400 for each dependent
(If you are the head of a family (see definition on other side) only income of dependent(s) listed above, \$400 for each listed dependent except one)

\$ 2,600	00
\$ 0	00
\$ 2,600	00

5. INCOME SUBJECT TO TAX**TAX**

6. Tax to be paid (from Column A or B of table on other side)

51

I (we swear) (or affirm) that this return has been examined by me/us, and, to the best of my/our knowledge and belief, is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and regulations issued under authority thereof; and that I/we had no income from sources other than stated herein.

Subscribed and sworn to by Theodore William GoldsteinTheodore William Goldstein
(Signature)

before me this 16th day of March, 1942.

Foster M. Bauer
(Signature and title of affiant (noticer, attorney, etc.)
Notary PUBLIC



(Signature)
(If this is a power of attorney, it must be signed by both husband and wife. It must be done in before a power of attorney for the power granted by the return.)

An income tax return is required to be filed by single persons having a gross income (item 3 above) of \$750 or more and married persons having a gross income of \$1,500 or more. A husband and wife may make a joint return on this form if their combined gross income is not more than \$3,000. A separate return may be made on this form if the gross income of the one filing the return is not more than \$3,000. If this return is used, it must be filed with the Collector of Internal Revenue for your district on or before March 15, 1942. The tax may be paid in equal quarterly installments commencing March 15, 1942. Pay tax, if any, to the Collector and if payment is made by check or money order, make payable to "Collector of Internal Revenue."

Exhibit 1-A (Attached to Exhibit 1).

PLACE CHECK MARK (✓) IN THE APPLICABLE BLOCK □ BELOW

Single (and not head of family) on last day of year.....

Married but not living with husband or wife (and not head of family) on last day of year.....

Married and living with husband or wife on last day of year but each filing separate returns.....

IF YOU CHECKED ONE OF ABOVE, FIND YOUR TAX IN COLUMN A

Married and living with husband or wife on last day of year and this return includes all income of husband and wife.....

Head of family (a single person or married person not living with husband or wife who exercises family control and supports closely connected dependent relative(s) in one household) on last day of year.....

IF YOU CHECKED ONE OF ABOVE, FIND YOUR TAX IN COLUMN B

If income subject to tax from Item 1 is:		COLUMN A	COLUMN B	If income subject to tax from Item 2 is:		COLUMN A	COLUMN B	If income subject to tax from Item 3 is:		COLUMN A	COLUMN B
User	Net not over	Year tax is	Year tax is	User	Net not over	Year tax is	Year tax is	User	Net not over	Year tax is	Year tax is
81	8750	80	80	81,500	81,500	862	81	82,500	82,575	8125	860
750	775	1	0	1,525	1,525	65	2	2,375	2,300	180	65
775	800	2	0	1,550	1,575	66	3	2,300	2,225	132	65
800	825	3	0	1,575	1,600	70	5	2,325	2,250	134	67
825	850	5	0	1,600	1,625	72	6	2,350	2,275	137	69
850	875	7	0	1,625	1,650	74	7	2,375	2,400	140	71
875	900	9	0	1,650	1,675	76	9	2,400	2,425	141	73
900	925	11	0	1,675	1,700	78	11	2,425	2,450	143	75
925	950	14	0	1,700	1,725	80	13	2,450	2,475	145	78
950	975	16	0	1,725	1,750	82	15	2,475	2,500	147	80
975	1,000	18	0	1,750	1,775	84	17	2,500	2,525	150	82
1,000	1,025	20	0	1,775	1,800	87	19	2,525	2,550	152	84
1,025	1,050	22	0	1,800	1,825	89	22	2,550	2,575	154	86
1,050	1,075	24	0	1,825	1,850	91	24	2,575	2,600	156	88
1,075	1,100	26	0	1,850	1,875	93	26	2,600	2,625	158	91
1,100	1,125	29	0	1,875	1,900	95	28	2,625	2,650	160	93
1,125	1,150	31	0	1,900	1,925	98	30	2,650	2,675	162	95
1,150	1,175	33	0	1,925	1,950	100	32	2,675	2,700	165	97
1,175	1,200	36	0	1,950	1,975	102	35	2,700	2,725	167	99
1,200	1,225	37	0	1,975	2,000	104	37	2,725	2,750	169	102
1,225	1,250	39	0	2,000	2,025	106	39	2,750	2,775	172	104
1,250	1,275	42	0	2,025	2,050	109	41	2,775	2,800	174	106
1,275	1,300	44	0	2,050	2,075	111	43	2,800	2,825	177	108
1,300	1,325	46	0	2,075	2,100	113	45	2,825	2,850	180	110
1,325	1,350	48	0	2,100	2,125	115	48	2,850	2,875	182	112
1,350	1,375	50	0	2,125	2,150	117	50	2,875	2,900	184	114
1,375	1,400	52	0	2,150	2,175	119	52	2,900	2,925	186	117
1,400	1,425	55	0	2,175	2,200	122	54	2,925	2,950	189	119
1,425	1,450	57	0	2,200	2,225	124	56	2,950	2,975	194	123
1,450	1,475	59	0	2,225	2,250	126	58	2,975	3,000	197	123
1,475	1,500	61	0								

The income to be reported in this return is gross income (not including income which is wholly exempt from income tax) without any deductions. The taxes in the above table are such that they generally compensate for deductions and credits not allowable if this form is used.

FORM 1040 A
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

**OPTIONAL
UNITED STATES
INDIVIDUAL INCOME TAX RETURN**

This return may be filed instead of Form 1040 by citizens
(or resident aliens) reporting on the cash basis if
gross income is not more than \$1,000 and is only
from salary, wages, dividends, interest,
and annuities

**CALENDAR YEAR
1942**

PRINT NAME AND HOME OR RESIDENTIAL ADDRESS PLAINLY BELOW

GOLDSTEIN THEODORE W.M.

(Name) (Use given names of both husband and wife, if this is a joint return)

415 ALDINE AVE.

(Street and number, or road name)

CHICAGO

COOK

ILL.

(Post office)

(County)

(State)

Do not write in these spaces

1775896

Post 9

(Gather's Stamp)

Occupation

Name and address of employer **SUN SHIPBUILDING & DRY DOCK CO., CHESTER, PENNA.**

If you had more than one employer attach statement showing name and address
and amount received from each.

Serial Search
number, if any **339-07-750**

Cash Check M.G.

DEPENDENTS ON JULY 1, 1942

(Names other than husband or wife) deriving their chief support from you if they are under 18 years of age or if they are
mentally or physically incapable of self-support

NONE OF DEPENDENT

RELATIONSHIP

IF 18 YEARS OF AGE OR OLDER, GIVE REASON FOR LISTING

GROSS INCOME LESS ALLOWANCE FOR DEPENDENTS

1. Salary, wages, and compensation for personal services
2. Dividends, interest, and annuities
3. Total

4. Less \$365 for each dependent

(If you are the head of a family (see definition under item 6 on other side) only income of dependents (if listed above) less \$365 for each
listed dependent except one.)

5. INCOME SUBJECT TO TAX

TAX

1. Tax on item 5 (from Column A, B, or C of table on other side)

I declare, under the penalties of perjury, that this return has been examined by me, us, and, to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and regulations issued under authority thereof; and that I've had no income from sources other than stated herein.

MARCH 2

1943.

Theodore H. Goldstein

(If this return includes gross income of both husband and wife, it must be signed by both.)

Failure to remit payment.—An income tax return must be filed by single persons having a gross income (item 3 above) of \$600 or more and married persons having a gross income either separately or combined of \$1,000 or more.

Military and眷属 personnel.—Members of the military or naval forces of the United States whose gross income (item 3 above) on December 31, 1942, should not include in gross income the sum \$500 if single on such date, or the first \$500 if separated or head of a family on such date, received as compensation for active service.

Husband and wife.—Husband and wife may file this joint annual return if they were living together July 1, 1942, and if their combined gross income for the calendar year is not more than \$1,000. A separate return may be made on this form if the gross income for the calendar year of the one filing the return is not more than

\$1,000, except that in the case of a husband and wife living together at any time during the calendar year separate returns may not be made on this form unless each elects to use this form.

Allowance for dependents.—Allowance of \$365 for each dependent is applicable when this form is used. Where Form 1040 is used, the allowance for each dependent is \$350.

Amended returns.—If a qualified taxpayer elects to use this form, amended return may not be made on Form 1040.

Filing of return and payment of tax.—The return must be filed with the Collector of Internal Revenue for your district on or before March 15, 1943. The tax may be paid in equal quarterly installments commencing March 15, 1943. Pay tax, if any, to the Collector and if payment is made by check or money order, make payable to "Collector of Internal Revenue".

INDICATE YOUR STATUS ON JULY 1, 1942, BY PLACING CHECK MARK (✓) IN THE APPLICABLE BLOCK BELOW

1. Single (and not head of family) on July 1, 1942.
2. Married and not living with husband or wife (and not head of family) on July 1, 1942.

IF YOU CHECKED NO. 1 OR NO. 2 ABOVE, FIND YOUR TAX
IN COLUMN A

4. Married and living with husband or wife on July 1, 1942, and spouse had no gross income for the entire year.

5. Married and living with husband or wife on July 1, 1942, and this return includes gross income of both husband and wife for the entire year.

6. Head of family (a single person or married person not living with husband or wife who exercises family control and supports closely connected dependent relative(s) in one household) on July 1, 1942.
(State number of such dependent relatives _____)

3. Married and living with husband or wife on July 1, 1942, but each filing separate returns on this form.

IF YOU CHECKED NO. 3 ABOVE, FIND YOUR TAX IN COLUMN B

IF YOU CHECKED NO. 4, 5, OR 6 ABOVE, FIND YOUR TAX
IN COLUMN C

		If income subject to tax (less 5% on other, if any) is			If income subject to tax (less 5% on other, if any) is			If income subject to tax (less 5% on other, if any) is			If income subject to tax (less 5% on other, if any) is			
		COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C	COLUMN A	COLUMN B	COLUMN C	
Over	But not over	Year tax is	Year tax is	Year tax is	Over	But not over	Year tax is	Year tax is	Year tax is	Year tax is	Over	But not over	Year tax is	
80	\$325	\$0	\$0	\$0	\$1,350	\$1,375	\$141	\$195	\$19	\$2,175	\$2,300	\$225	\$264	\$150
525	550	1	0	0	1,375	1,400	145	196	14	2,300	2,325	244	269	155
525	575	4	0	0	1,400	1,425	149	199	17	2,325	2,350	259	273	159
575	600	7	0	0	1,425	1,450	154	195	21	2,350	2,375	266	277	163
600	625	11	0	0	1,450	1,475	158	199	25	2,375	2,400	301	292	165
625	650	15	0	0	1,475	1,500	162	193	29	2,400	2,425	345	296	171
650	675	20	3	0	1,500	1,525	167	148	34	2,425	2,350	309	270	176
675	700	24	6	0	1,525	1,550	171	198	39	2,350	2,375	314	295	181
700	725	28	9	0	1,550	1,575	175	196	43	2,375	2,400	319	299	182
725	750	33	14	0	1,575	1,600	180	161	47	2,400	2,425	322	303	185
750	775	37	18	0	1,600	1,625	184	165	51	2,425	2,450	327	308	184
775	800	41	22	0	1,625	1,650	188	160	55	2,450	2,475	331	312	189
800	825	46	27	0	1,650	1,675	192	174	60	2,475	2,500	335	316	192
825	850	50	31	0	1,675	1,700	197	178	64	2,500	2,525	340	321	197
850	875	54	35	0	1,700	1,725	201	180	68	2,525	2,550	344	325	201
875	900	59	40	0	1,725	1,750	206	197	73	2,550	2,575	348	329	205
900	925	63	44	0	1,750	1,775	210	191	77	2,575	2,600	353	334	209
925	950	67	48	0	1,775	1,800	214	196	81	2,600	2,625	357	338	214
950	975	71	52	0	1,800	1,825	218	190	85	2,625	2,650	361	342	218
975	1,000	75	57	0	1,825	1,850	222	194	90	2,650	2,675	366	342	221
1,000	1,025	80	61	0	1,850	1,875	227	198	94	2,675	2,700	371	351	227
1,025	1,050	84	65	0	1,875	1,900	231	193	98	2,700	2,725	376	355	231
1,050	1,075	89	70	0	1,900	1,925	235	197	103	2,725	2,750	381	359	235
1,075	1,100	93	74	0	1,925	1,950	240	201	107	2,750	2,775	386	364	239
1,100	1,125	97	78	0	1,950	1,975	244	205	111	2,775	2,800	391	369	244
1,125	1,150	102	83	0	1,975	2,000	249	209	116	2,800	2,825	396	374	248
1,150	1,175	106	87	0	2,000	2,025	253	204	120	2,825	2,850	401	379	253
1,175	1,200	110	91	0	2,025	2,050	257	210	124	2,850	2,875	406	384	257
1,200	1,225	115	96	0	2,050	2,075	262	205	129	2,875	2,900	411	389	261
1,225	1,250	119	100	0	2,075	2,100	266	207	133	2,900	2,925	416	394	265
1,250	1,275	123	104	0	2,100	2,125	270	251	137	2,925	2,950	421	399	269
1,275	1,300	129	109	1	2,125	2,150	275	206	143	2,950	2,975	426	404	274
1,300	1,325	132	113	4	2,150	2,175	279	200	148	2,975	3,000	431	409	279
1,325	1,350	136	117	7										

The income to be reported in this return is gross income (not including income which is wholly exempt from income tax) without any deductions. The taxes in the above table make allowance for personal exemption, earned income credit, and deductions aggregating 6 percent of gross income.

March 2, 1943.

Collector, Internal Revenue
Tillman Building,
Chicago, Ill.

Dear Sir:

On December 11, 1942, I enlisted in the United Army Air Corps Enlisted Reserve for pilot training. This training is to cover a period of 5 months, during which time I do not receive any income. I therefore, find it necessary to sustain myself from a small reserve, which makes it impossible to effect any payment on the tax due for 1942 income. I would appreciate if this tax could be defrayed until I am in a better position to liquidate this obligation.

I thank you for any consideration extended, and beg to remain,

Yours very truly,
Theodore Sollestin

53

GOVERNMENT'S EXHIBIT 2.

State of Illinois }
County of Cook } ss:

AFFIDAVIT.

William Goldstein, being first duly sworn, upon oath deposes and says that he is an attorney in the City of Chicago; has practiced law in this city for the past several years, his office being located at 140 North Dearborn Street, Chicago, Illinois.

On or about the first part of April, 1944 (the exact date is unknown to me at this time), Mr. Stanley A. Wodrick, a Deputy Collector, with office located at 3256 North Pulaski Road, Chicago, Illinois, called at my office in the afternoon, presented his card and credentials, and requested me to show him a deed executed to Theodore W. Goldstein with reference to the property located at 3424 Lawrence Avenue, Chicago, Illinois, known as the Albany Park Bank Building. I looked through my file and could not find the deed, and I suggested that we walk over to the Recorder's Office at the County Building, which we did; and in checking through the records we found a photostatic copy of the deed, showing title in Theodore Goldstein.

Mr. Wodrick, at that time, advised me that his office had requested him to check this property and income. I advised Mr. Wodrick that Theodore Goldstein was not the owner of the property; he was merely the holder of the record title.

54 Mr. Wodrick told me that, in view of the fact that Theodore Goldstein is the title owner of record, his superior had ruled that Theodore must file returns and pay a tax. I told him it would not be done. Mr. Wodrick thereafter called on me at my office on as many as ten different occasions or more and during the visits we discussed the situation. I advised him at all times that Theodore Goldstein and myself have absolutely no interest in this property.

Mr. Wodrick suggested that I call at his office, 3256 North Pulaski Road, to take the matter up further with Mr. Edward H. Schulz, who is in charge of the office. I made an appointment for a Saturday morning; called at that address; met Mr. Wodrick, who took me into Mr. Schulz's office; introduced me, and we discussed this mat-

ter. I told Mr. Schulz that Theodore was merely the record title holder of the property and not the actual owner. Mr. Schulz took the same position that Mr. Wodrick took and insisted that returns be filed and a tax paid. After further discussion Messrs. Schulz and Wodrick stated that the Government is interested in collecting a tax and the only one they can collect it from is the owner who appears of record. I left the office after advising Mr. Wodrick and Mr. Schulz that I would not pay tax on the rental income.

Sometime later Mr. Wodrick called me at my office and we had a further conversation concerning this matter. As a result of this conversation I concluded that if Theodore Goldstein failed to file returns and pay a tax that an assessment would be made against him for whatever taxes were claimed to be due. Sometime later I again called on Mr. Wodrick at his office. He advised me that he was working on the figures and would prepare the returns for Theodore's signature, and again we discussed the tax and ownership; he persisted in his position that Theodore Goldstein, who is the title owner of record, must file returns and pay a tax.

Thereafter, I again called on Mr. Wodrick at his office. He handed me the income tax returns which were prepared by him for Ted Goldstein's signature. I took them home with me and had Theodore sign them and returned them to Mr. Wodrick's office. Mr. Wodrick acknowledged the signature on the returns. He then took me to the cashier's cage; I paid the tax and walked back to his desk with him. He called over Mr. Sherwood Hinman, who is the chief deputy in charge of the northwestside branch, located at 3256 North Pulaski Road, who replaced Mr. Edward H. Schulz. While sitting there, Mr. Wodrick presented to me a return, all filled in, showing a tax of over \$13,000.00. I asked him what it was. He told me, in view of the fact that Theodore is the title owner, they must collect a tax on the \$60,000.00, which was the purchase price of this property in question. I told him I wouldn't pay that under any circumstances; that Theodore had had no money and, particularly, as great an amount as \$60,000.00. Mr. Hinman then spoke up and said, "What seems to be the trouble; is the assessment too much money?" I spoke up and said that if the amount was only thirteen cents I wouldn't pay it." Mr. Wodrick retained the return and I left his office.

Exhibit 2 (Attached to Answer)

During the course of one of my conferences with Mr. Wodrick, he presented to me at my office a memorandum which read in part as follows: "I have acted as attorney and agent for my son, Theodore, the owner, in the management of the property located at 3424 Lawrence Avenue, Chicago, Illinois, purchased for my son, Theodore, in 1937." After looking this statement over I told Mr. Wodrick that it was not correct; not true, and I refused to sign it. A copy of this memorandum is attached to this affidavit. At some later date, when I was in Mr. Schulz's office at 3256 North Pulaski Road, a new type-written memorandum was prepared stating that Theodore was the title owner of record, which was signed by me. A copy of this memorandum is also attached to this affidavit.

I have read the affidavit of Frank Sampson, marked Exhibit E-1, dated October 13, 1944, which I understand was filed by the defendants in the case of United States *vs.* William R. Johnson, et al. In my discussions with Mr. Sampson relative to an option to renew the lease then in existence, I did not state to him that it was not necessary for him to have an option of renewal as he could stay in possession of the premises as long as he wished. At no time did I make any such statement to

57 Sampson. Neither at that time nor at any other time did I say to Sampson in connection with an option for extension of the lease that Sampson would have to wait "until the court ruled in the Johnson case which was then pending before Judge Barnes." I further state that at no time did I state to Sampson that "Johnson never had any interest in the property and has nothing whatever to do with it." I never did make such a statement to Sampson or any statement like it.

At this time I reaffirm the testimony given by me in the trial of the case of United States *vs.* William R. Johnson, et al., concerning the Albany Park Bank Building and, in particular restate that the amount expended for the purchase of the Albany Park Bank Building property was \$59,887.05 and that I got that money from Mr. Johnson in the form of currency.

In conclusion I state that I do not have and never did have any right, title or interest of any kind in the property at 3424 Lawrence Avenue, Chicago, Illinois, or in its rents, profits, income or issues, and do not now and never have claimed any such right, title or interest.

(Sgd.) William Goldstein.

Subscribed and sworn to before me this 7th day of December, A.D. 1944.

Anna L. Minahan (Sgd.)
Notary Public.

58 GOVERNMENT'S EXHIBIT NO. 2A.

I have acted as attorney and agent for my son, Theodore, the owner, in the management of the property located at 3424 Lawrence Avenue, Chicago, Illinois, purchased for my son Theodore in 1937. For several years the premises were operated by Theodore Goldstein under the name Albany Park Safe Deposit Vault Company.

In 1941 Theodore entered into a lease with the Hines Realty and Construction Company, the terms being \$250.00 per month.

During the early part of 1944 a new lease was entered into with Frank Sampson with provision that if a bank is operated on the premises the rental would be \$300.00 per month.

I have received the monthly rental payments from January 1942 to present time from Frank Sampson, as President of Hines Realty and Construction Company in the form of checks made payable to me as agent. I endorsed the checks received and gave the currency to my son Theodore.

As attorney and agent, for my son Theodore, I am authorized by him to make payment to the Collector of Internal Revenue the amount of tax owed by him because of his failure to pay the income tax due on the income received by him from this property.

My son Theodore is at the present time a member of the armed forces of the United States.

59 GOVERNMENT'S EXHIBIT NO. 2B.

Chicago, Illinois,
June 13, 1944.

Honorable Carter H. Harrison
Collector
U. S. Court House
Chicago, Illinois

Dear Sir:

Reference is made to rental income from property located at 3424 Lawrence Avenue, Chicago, Illinois, which

has not been reported in income tax returns by my son, Theodore Goldstein, title owner of record, and which was received by me as agent.

This property was acquired by purchase in 1937 in the name of my son, Theodore Goldstein, title owner of record, and leased to the Hines Realty and Construction Company, the present occupants, from January 1942 on, at \$250.00 per month.

Real estate taxes in the amount of \$738.13 for 1937, \$1465.60 for 1938 and \$1531.08 for 1939 were paid by the Albany Park Safe Deposit Vault Company, and were shown as a deduction on the corporate returns of the Albany Park Safe Deposit Vault Company for those years. No real estate taxes have been paid for the years 1940, 1941, 1942 and 1943.

No rent was paid by the Albany Park Safe Deposit Vault Company to Theodore Goldstein, title owner of record, for space occupied in building located at 3424 Lawrence Avenue, Chicago, Illinois during 1937 to October, 1941, inclusive.

As agent for my son Theodore, who is at the present time a member of the armed forces of the United States, I am authorized by him to make payment to the Collector of Internal Revenue any tax owed by him on rental income in question received from this property.

/s/ Wm. Goldstein.

60

GOVERNMENT'S EXHIBIT NO. 3.

Testimony of Mr. Stanley A. Wodrick, Deputy Collector of Internal Revenue, taken in the office of the Intelligence Unit, Bureau of Internal Revenue, Room 284-C, U. S. Court House, Chicago, Illinois, at 2:45 p.m. on Friday, August 11, 1944, in the matter of the income tax liability to the United States of Theodore W. Goldstein.

Present:

Mr. Stanley A. Wodrick, witness;

Mr. Alfred W. Fleming, special agent in charge;

Recorder: Helen Stahl.

Q. Mr. Wodrick, will you please raise your right hand? Do you swear that the testimony you are about to give in the matter of the income tax liability to the United States of Theodore W. Goldstein will be the truth, the whole truth, and nothing but the truth, so help you God?

A. I do.

Q. Will you please state your name and address?

A. My name is Stanley A. Wodrick, 5834 Gunnison Street.

Q. Where are you employed, Mr. Wodrick?

A. With the Collector of Internal Revenue, U. S. Court House, Chicago, Illinois.

Q. What is your official title?

A. Zone deputy collector.

Q. How long have you acted in that capacity?

A. Since February 1941.

Q. I will hand you herewith a memorandum dated April 17, 1944, addressed to Edward Schultz, Division Chief, Northwest Division Office, by Daniel J. Conerty, Chief Field Deputy, which reads, in part, as follows: "An anonymous telephone communication received in this office during the past filing period stated that the income from the building at 3432 Lawrence Avenue is not reported by anybody and supposedly the rents are paid by the different organizations occupying the property to a William Goldstein, who claims he is agent for Theodore Goldstein." Was this memorandum assigned to you for investigation?

A. Yes, it was.

61 Q. Will you kindly tell us, in your own words, exactly what steps were taken by you in the investigation of this matter?

A. Shortly after April 17, 1944—the exact date is unknown at this time—I made a personal call at the Hines Realty Company, 3424 Lawrence Avenue, Chicago, Illinois, and asked to see Mr. Frank Sampson, who is president of said company. The anonymous communication has the address 3432 Lawrence Avenue, which is incorrect. It should be 3424 Lawrence Avenue. I asked to see the lease between the Hines Realty Company and William Goldstein, who supposedly received rent income from the Albany Park Bank Building, 3424 Lawrence Avenue. The lease was signed by William Goldstein as agent for Theodore Goldstein. My next step was to contact Mr. William Goldstein, 140 North Dearborn, on or about May 12, 1944. At that time I asked Mr. Goldstein who the owner of the building at 3424 Lawrence Avenue was. His reply was: "I do not know the owner." He then asked me the reason for this investigation. I had explained to him that rent received from the Albany Park Bank Building had not been reported by anyone and it was discovered that he,

William Goldstein, was acting agent for Theodore Goldstein. Mr. William Goldstein objected to that, saying that Theodore Goldstein was not the owner of the building, but merely title owner of record; and to confirm that statement, Mr. William Goldstein and I went to the County Building and checked the title. We found a photostatic copy—I think it was dated July 17, 1937—showing the name of Theodore Goldstein as the owner. I explained to Mr. William Goldstein that, since the title shows Theodore Goldstein as the owner, he was the person who was to report rents received from the Albany Park Bank Building, 3424 Lawrence Avenue, in his income-tax returns for the years 1937 through 1943. Mr. William Goldstein objected to that, stating that Theodore Goldstein was not the actual owner. However, after a few days, Mr. William Goldstein agreed to have the returns prepared for Theodore Goldstein, showing rent income from the Albany Park Bank Building for the years 1937 through 1943. Mr. William Goldstein said that the reason he was agreeing or wanted to agree and prepare these returns for his son, Theodore Goldstein, was that he would like to have the matter closed as soon as possible. I have prepared income tax returns, Form 1040, for the years 1937, 1938, and 1939, showing no tax due. I have also requested copies of transcripts of income tax returns for 1940 through 1943, and these are in the process of completion, for Theodore Goldstein.

Q. When you first contacted Mr. William Goldstein in regard to the ownership of the Albany Park Building, did I understand you to say that Mr. William Goldstein declared he did not know who owned that property?

A. That is right.

62 Q. What else did William Goldstein say at that particular time in regard to the collection of rents or the ownership of that property?

A. He was rather surprised to hear a question as that as to who was the owner of the building. He said it was all a part of court record and the testimony previously given, and he also stated that he received money from persons unknown for the purchase of that building. He also stated that he didn't know whether it was Skidmore's or Johnson's money. I also asked Mr. William Goldstein the purpose of placing the title in Theodore Goldstein's name, and he replied that at one time William Johnson had an idea of opening a bank, to be located in the building

at 3424 Lawrence Avenue, known as the Albany Park Bank Building, and he did not want to disclose the identity of the owners of the building to the people in the neighborhood. I asked Mr. Goldstein whether the rent money was held in an account for the purpose of returning that money to the person or persons to be later identified as the owners of the building. Mr. Goldstein replied that he merely kept the money, but did not have a special account for that purpose.

Q. Why did you ask Mr. William Goldstein who is the owner of the Albany Park Bank Building property?

A. My reason for asking that question was to ascertain the person liable for income tax based on rental income received from the tenants of the Albany Park Bank Building.

Q. Did you tell Mr. William Goldstein that the income received from the Albany Park Bank Building should be reported on the income tax returns of Theodore Goldstein, since he was the owner of record?

A. Yes, I did.

Q. What was William Goldstein's reply to that?

A. He stated that Theodore Goldstein was not the owner and that he was the title owner of the record and, as such, could not be held liable for the tax.

Q. Then what happened?

A. At that time I explained to Mr. Goldstein that, since the title shows the name of Theodore Goldstein, he was the individual or person who should report the income received from the building.

Q. Did William Goldstein agree to this?

A. The first time he was approached on the subject, he disagreed, stating that Theodore Goldstein was not the actual owner. However, after a few days, I called on William Goldstein and at that time he agreed to have the returns prepared in the name of Theodore Goldstein.

63 Q. He agreed to have the rental income from the Albany Park Bank Building reported on the income tax returns to be prepared for Theodore Goldstein. Is that correct?

A. Yes, that is correct.

Q. Then, I understand that you did prepare delinquent income tax returns for Theodore Goldstein for the years 1937 through 1939, inclusive. Is that correct?

A. Yes, I did.

Q. And you reported thereon net income from the Albany Park Bank Building for the year 1937 \$1,046.86, for the year 1938 \$340.09, and for the year 1939, a loss of \$1,115.60. Incidentally, there is no tax due on any of those returns?

A. That is correct.

Q. As I understand the matter, you have an engagement to meet Mr. William Goldstein at some later date in regard to the preparation of either delinquent or amended returns for Theodore Goldstein for the years 1940 to 1943?

A. Yes, I have. It is August 12, 1944.

Q. Did you tell William Goldstein that you proposed to report approximately \$60,000 income on Theodore Goldstein's 1937 income tax return as being income received in that year on the purchase of the Albany Park Bank Building?

A. Yes, I did.

Q. What did Mr. William Goldstein say in regard to that?

A. He disagreed very strenuously to the extent that he stated that he did not think that any court in the country would uphold the assessment.

Q. Did he simplify that statement in any way?

A. Yes, he stated that, since the money had never been received by Theodore Goldstein, he did not see how we could proceed on the basis that \$60,000 was income to Theodore Goldstein for the year 1937.

Q. I will hand you herewith an unsigned and undated typewritten memorandum which reads, in part, as follows: "I have acted as attorney and agent for my son, Theodore, the owner, in the management of the property located at 3424 Lawrence Avenue, Chicago, Illinois, purchased for my son, Theodore, in 1937."

A. Yes, I have.

64 Q. Was this statement in your possession at any time?

A. Yes, it was.

Q. How did it come to be in your possession?

A. It was given to me by Mr. Edward H. Schultz, Division Chief of the Northwest Division Office.

Q. Do you remember when it was given to you?

A. I did not receive the statement with the original assignment. The approximate date that I did receive the statement was about a week prior to June 13, 1944.

Q. What did Mr. Schultz say to you at the time he handed you this memorandum?

A. He said that he wanted Mr. William Goldstein to sign the statement.

Q. Did Mr. Schultz explain why he wanted this statement signed by William Goldstein?

A. I do not recall Mr. Schultz' giving me a reason for having this statement signed by William Goldstein.

Q. Did you ask him to sign this memorandum?

A. Yes, I did.

Q. What was said at that time by Mr. William Goldstein?

A. He stated he could not sign a statement like that.

Q. Did he give any reasons as to why he could not sign this memorandum?

A. Yes, he did.

Q. Will you tell us, in your own words, what Mr. William Goldstein said in regard to this matter?

A. He objected to the words contained in the memorandum, namely: "the owner" and "purchased for my son, Theodore, in 1937."

Q. Do those words appear in the first paragraph of this memorandum?

A. Yes, they do.

Q. What did you then do in regard to this subject?

A. It was then suggested to Mr. William Goldstein that he word his own statement—one that he thinks would be suitable—and properly sign it.

65 Q. Who made that suggestion to Mr. William Goldstein?

A. Mr. Edward H. Schultz.

Q. The Division Chief?

A. Yes.

Q. Was that at a conference in Mr. Schultz' office, attended by you and Mr. William Goldstein?

A. Yes, it was.

Q. Were any other persons present?

A. No.

Q. I will hand you a letter addressed to the Honorable Carter H. Harrison, Collector, U. S. Court House, Chicago, Illinois, dated June 13, 1944, signed "William Goldstein," which reads, in part as follows:

"Reference is made to rental income from property located at 3424 Lawrence Avenue, Chicago, Illinois, which has not been reported in income tax returns by my son,

Theodore Goldstein, title owner of record, and which was received by me as agent." Is this the statement dictated and signed by William Goldstein?

A. Yes, this is the statement.

Q. Attached to the delinquent income tax returns prepared for Theodore Goldstein for the years 1937 to 1939, inclusive, is a report addressed to Daniel J. Conerty, Chief Field Deputy, under date of July 15, 1944, signed by Stanley A. Wodrick, setting forth the income from the Albany Park Bank Building, which you have set up as income to Theodore Goldstein as title owner of record of said building. Is this your report on that matter, Mr. Wodrick?

A. Yes, it is.

Q. Is that your signature?

A. It is.

Q. Is there any further statement you would care to make in connection with this matter which has not been covered by questions and answers?

A. No.

United States of America }
Northern District of Illinois } ss.

I have carefully read the foregoing statement, consisting of six pages, which is a transcript of questions which were propounded to me and my answers to such questions, on the 11th day of August, 1944, at Chicago, Illinois, 66 relative to the income tax liability to the United States of Theodore W. Goldstein.

I hereby certify that the foregoing answers are true and correct, that I have made the corrections shown and have placed my initials opposite each correction, and that I have initialed each page of the statement.

(signed) Stanley A. Wodrick.

Subscribed and sworn to before me at 3:35 PM this 12th day of August, 1944, in Room 284, U. S. Court House, Chicago, Illinois.

(signed) Alfred W. Fleming.

67

GOVERNMENT'S EXHIBIT NO. 4.

State of Illinois { ss;
County of Cook }

AFFIDAVIT.

I, Stanley A. Wodrick, Deputy Collector of the Internal Revenue Department, upon oath, being duly sworn, depose and say as follows:

I am the same Stanley A. Wodrick who subscribed and swore to a question and answer statement, dated August 12, 1944, which statement was made in Room 284, United States Court House, Chicago, Illinois, before Alfred W. Fleming, Special Agent in Charge at Philadelphia, Pennsylvania, of the Intelligence Division of the Bureau of Internal Revenue, Treasury Department. This statement consists of seven pages and embraces my answers in response to questions propounded to me by Mr. Fleming in the presence of a stenographer named Helen Stall. I understand that this question and answer statement will be filed by the Government in its Answer to the Defendants' Amended Motion for New Trial in the case of *United States of America v. William R. Johnson, et al.*

I have examined this statement and wish to make a correction of a portion of it. On Page 3 of this statement, in response to the question:

"What else did William Goldstein say at that particular time in regard to the collection of rents or the ownership of that property?"

it appears from this statement that I answered as follows:

"He was rather surprised to hear a question as that as to who was the owner of the building. He said it was all a part of Court record and the testimony previously given, and he also stated that he received money from persons unknown for the purchase of that building."

68 What I meant and intended to say at that time was that Goldstein stated to me that he did not know whose money it was that he had received for the purchase of that building. At no time did I ask Mr. Goldstein who gave him the money for the purchase of that building and

at no time did he say that unknown persons gave him the money to purchase that building.

(signed) Stanley A. Wodrick.

Subscribed and sworn to before me this 7th day of December, A. D. 1944.

(signed) Anna L. Minahan,
Notary Public.

69

GOVERNMENT'S EXHIBIT NO. 5.

State of Illinois, } ss.
County of Cook. }

Edward H. Schulz, being first duly sworn on oath deposes and says:

That he is Division Chief in Charge of the Miscellaneous Tax Squad of the Field Division of the Treasury Department, Internal Revenue Bureau, Room No. 1, United States Court House, Chicago, Illinois; that in the latter part of April, 1944, he was Division Chief in Charge of the Northwest Division Office of the Field Division of the Treasury Department, Internal Revenue Bureau, located at 3256 North Pulaski Road, Chicago, Illinois. That in the latter part of April, 1944, he received an assignment from the Chief Field Deputy to institute an investigation for the purpose of determining the identity of the persons interested in or receiving income from a building located at 3424 Lawrence Avenue, Chicago, Illinois. That pursuant to this assignment, he instructed Stanley A. Wodrick, a deputy collector, attached to affiant's office, to conduct such an investigation; that thereafter, and during the course of such investigation, affiant had conversations on three or four occasions with William Goldstein relative to the interest, if any, of Theodore Goldstein in the property at 3424 Lawrence Avenue, Chicago, Illinois. In these conversations William Goldstein at all times stated that Theodore Goldstein was the title owner of record of the property at 3424 Lawrence Avenue, Chicago, Illinois only and was not the actual owner of this property. He was very definite in making this fact understood. As Division Chief this affiant told Mr. Goldstein that Theodore Gold-

stein; as title owner of record, was required to file income tax returns on this property even though the claim was made that Theodore Goldstein was not the actual owner of the property.

70 Affiant further states that subsequent to the first conversation with William Goldstein relative to the property at 3424 Lawrence Avenue, and after William Goldstein had informed me that Theodore Goldstein was title owner of record only, affiant received a communication in the form of typewritten suggestions from the office of the Chief Field Deputy, a copy of which typewritten suggestions is attached to this affidavit. That affiant requested William Goldstein to sign an affidavit embracing the suggestions contained in these typewritten suggestions forwarded to me. That William Goldstein read the typewritten suggestions forwarded to me and then stated that he would not sign any affidavit containing any statement that his son Theodore was "the owner" of the property located at 3424 Lawrence Avenue, Chicago, Illinois, or containing any statement that he purchased that property for his son, Theodore. At that time William Goldstein reiterated his statement that his son Theodore was not the owner of that property but was merely the title owner of record.

Affiant further sayeth not.

(signed) Edward H. Schulz.

Subscribed to and sworn to before me this 7th day of December, A. D. 1944.

(signed) Anna L. Minahan,
Notary Public.

71 GOVERNMENT'S EXHIBIT NO. 5A.

I have acted as attorney and agent for my son Theodore, the owner in the management of the property located at 3424 Lawrence Avenue, Chicago, Illinois, purchased for my son Theodore in 1937. For several years the premises were operated by Theodore Goldstein under the name Albany Park Safe Deposit Vault Company.

In 1941 Theodore entered into a lease with the Hines Realty and Construction Company, the terms being \$250.00 per month.

During the early part of 1944 a new lease was entered into with Frank Sampson with provision that if a bank is operated on the premises the rental would be \$300.00 per month.

I have received the monthly rental payments from January 1942 to present time from Frank Sampson, as President of Hines Realty and Construction Company in the form of checks made payable to me as agent. I endorsed the checks received and gave the currency to my son Theodore.

As Attorney and Agent, for my son Theodore, I am authorized by him to make payment to the Collector of Internal Revenue the amount of tax owed by him because of his failure to pay the income tax due on the income received by him from this property.

My son Theodore is at the present time a member of the armed forces of the United States.

Filed
Dec. 11,
1944

72 On the 11th day of December, 1944, the defendants filed a notice and the defendants' reply to Government's answer to the amended motion for a new trial, and affidavit of the defendant, William R. Johnson attached thereto, which said notice, defendants' reply and affidavit were in words and figures as follows, to-wit:

73 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32,168)

NOTICE.

To:

Hon. J. Albert Woll,
United States Attorney,
450 U. S. Court House,
Chicago, Illinois.

Please Take Notice that the defendants are this day filing their Reply to Government's Answer to Defendants' Amended Motion for New Trial in the Office of the Clerk of the District Court of the United States, for the North-

ern District of Illinois; Eastern Division, a copy of which said Reply is hereto attached for your convenience.

Dated at Chicago, Illinois, this 11th day of December, 1944.

(sgd) *Homer Cummings*
Homer Cummings
(sgd) *William J. Dempsey*
William J. Dempsey
*Attorneys for William R. Johnson,
Defendant*
(sgd) *Harold R. Schradzke*
Harold R. Schradzke
*Attorney for Jack Sommers, James
A. Hartigan, William P. Kelly
and Stuart Solomon Brown, De-
fendants.*

Received a copy of the above Notice and Reply therein referred to this 11th day of December, 1944.

J. Albert Woll

*United States Attorney
by J. M. Webster*

74 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Filed
Dec. 1
1944

(Caption—No. 32168)

REPLY OF DEFENDANTS TO GOVERNMENT'S
ANSWER TO DEFENDANTS' AMENDED MOTION
FOR NEW TRIAL.

This matter is now before this Court pursuant to an order of the Circuit Court of Appeals reopening the proceedings on defendants' motion for new trial and remanding the case to permit the filing and consideration of an amended motion for a new trial. The basis for the Circuit Court of Appeals' order was the admission by the Government that William Goldstein procured and filed certain income tax returns signed by Theodore Goldstein

the contents of which prove that William Goldstein gave false testimony at the trial of this case and that his affidavits submitted by the Government in opposition to defendants' Motion For a New Trial contain false averments.

The principal ground upon which defendants' original motion for new trial was predicated was that Gold-

75 Stein testified falsely at the trial of these cases and that his false testimony resulted in prejudice to the defendants, depriving them of a fair trial, and that therefore their conviction violated constitutional requirements for a fair trial. The uncontradicted evidence in support of defendants' Motion For a New Trial showed:

(a) That Goldstein had a compelling twofold motive for testifying falsely: (1) to protect his friend and client Skidmore from criminal and civil tax liability (for which purpose the Government admits he committed perjury on at least one other occasion); (2) to obtain immunity from prosecution for perjury and to escape disbarment (which immunity he has obtained, as he has obtained protection from disbarment, through the offices of the United States Attorney);

(b) That on numerous occasions *under circumstances which preclude any possibility of collusion* for the purpose of obtaining a new trial for defendants, Goldstein had made admissions which proved his testimony to have been false;

(c) Many undisputed facts which were not merely inconsistent with Goldstein's testimony but were utterly irreconcilable with it, and

(d) Facts and admissions utterly impeaching Goldstein's credibility.

This proof was deemed insufficient by this Court (a) on the ground that it did not include a formal affidavit of recantation by Goldstein,¹ and (b) on the ground that defendants submitted no affidavit of a third party containing a statement "Johnson did not give Goldstein the money to purchase the various pieces of prop-
76 erty."²

¹ An affidavit of recantation by a self-confessed perjurer has been uniformly held to be the least credible of all testimony. *Dale v. United States*, 66 F. 2d 666; *Harrison v. United States*, 7 F. 2d 259.

² See R. 476, 483, 485, 490, 491, 492. (These and subsequent references to "R" are to the printed record on appeal filed as Exhibit A to defendants' motion for a new trial.)

We will not here reargue at length the reasons why the evidence submitted in support of the original motion for new trial standing alone amply justifies the granting of a new trial. It is no longer necessary to do so in view of the tax returns filed by William Goldstein on behalf of his son Theodore. However, we waive none of the arguments in that respect.³

1. THE THEODORE GOLDSTEIN DELINQUENT AND AMENDED TAX RETURNS FOR 1937 THROUGH 1943 PROVE THE FALSETY OF WILLIAM GOLDSTEIN'S TRIAL TESTIMONY.

The undisputed facts with respect to the Albany Park Bank Building.—The undisputed testimony at the trial and on the original motion for new trial shows:

The building was purchased by Goldstein from a receiver in July, 1937. Title to the building was transferred at the same time to his son Ted Goldstein (R. 151-152). Ted Goldstein immediately leased part of the premises to the Albany Park Safe Deposit Vault Company (R. 153-154). In September, 1941, Goldstein as agent for his son Theodore leased the building to the Hines Realty & Construction Company, hereafter referred to as the "Hines Company", of which Frank Sampson was and is president⁴

³ Supplementing the cases cited (R. 320-327) in support of the contention that the Court of Appeals finally determined certain of the issues raised by the Government again on the original motion for new trial, we respectfully call this Court's attention to *Checker Cab Co. v. Markland*, 142 F. 2d 95.

⁴ Attached to the Amended Motion for New Trial is a copy of a new lease of the same property for a period of ten years beginning October 1, 1946, and executed January 3, 1944 by Theodore Goldstein. This exhibit (Ex. E-2) shows that even on that late date Theodore was purporting to act in no capacity other than that of owner. Sampson, president of the Hines Company prepared this lease and submitted it to William Goldstein at the latter's suggestion (Defs' Ex. E-1, p. 2). In submitting the lease Sampson "Explained to William Goldstein that it would also be necessary for me to have the lease signed by his son, Theodore Goldstein, who was the owner of the property rather than William Goldstein, as agent ***". Pursuant to this request William Goldstein procured the signature of his son as lessor and presented it to Sampson on January 3, 1944 (Ex. E-1, p. 3). None of this is denied by Goldstein in his affidavit submitted by the Government as an exhibit to its answer (Gov't Ex. 1).

77 (R. 202-204). Since that time Goldstein has collected the rents of \$250 (and commencing in October, 1943, \$300) per month under this lease and has cashed the rent checks for his private account after endorsing them "William Goldstein, Agent" and then "William Goldstein" (R. 199, 200-201). In July, 1943, the County Treasurer instituted a tax receivership proceeding against the property (R. 198-199). At the insistence of the County Treasurer's office, Goldstein took out and paid for insurance covering the property, the premium on which was more than \$300 (R. 206, 207-212).

Goldstein's trial testimony that Johnson was owner.—Despite these undisputed facts Goldstein at the trial unequivocally asserted that he bought this building "for Johnson" and this Court so understood his testimony. Goldstein's testimony was (R. 517-518):

"I was requested by Mr. Johnson to go out there and purchase the (Albany Park Bank) building for him. * * * I purchased that property at the request of Mr. Johnson. * * * Title to that property was taken in the name of Ted W. Goldstein, my son. Subsequently there was a quit claim deed delivered to Mr. William R. Johnson by my son. This Albany Park Building property was purchased July 16, 1937."⁵

78 This Court accurately paraphrased this testimony as follows (R. 512):

"Goldstein testified on the trial that he purchased this property for Johnson and paid for it with currency given him by Johnson; that he took title in the name of his son Ted Goldstein, and subsequently caused a quit-claim deed to be delivered to Johnson."

The tax returns conclusively show that Goldstein did not purchase the property for Johnson and that Johnson has never been the owner.—The tax returns signed by Theodore Goldstein for the years 1937-1943 (Exhibits C-1-C-7, inclusive) were filed for him, and the tax thereon paid by Williani Goldstein as agent for his son Theodore.

⁵ It is to be noted that this testimony at the trial does not permit of the hair-splitting distinction hitherto urged by the Government in this and other courts that Goldstein did not testify that he bought the property for Johnson. Indeed, this Court epitomized this trial testimony as follows (R. 512):

"Goldstein testified on the trial that he purchased this property for Johnson * * *."

(Gov't Exhibit on Amended Motion for New Trial, No. 2, p. 3; No. 2 (b)).

The returns (Exhibits to Amended Motion for New Trial, Ex. Nos. C-1—C-7) conclusively show that Theodore Goldstein by his solemn statements⁶ has *admitted* ownership of the Albany Park Bank Building in returning the rentals thereon as taxable to him. But he has gone further. By claiming deductions for depreciation thereon, and, in years of loss, by offsetting such loss against his income from other sources (see Ex. C-4 for 1940) he has affirmatively asserted in himself an interest in the property which is not less than complete legal and equitable ownership. The asserted right to depreciation as owner is shown in Schedule E of the 1937 return to have arisen in July, 1937, the date as of which the property is stated to have been acquired by the taxpayer (Defs' Ex. C-1 to Amended Motion for New Trial, p. 3). The same schedule also shows that the taxpayer claimed depreciation from July 1, 1937. The date of the deed to Theodore was July 6, 1937 (R. 151-152), actual delivery may not have been until July 16 (R. 518). Continuity of complete ownership of the property is thus claimed by Theodore from the date of its acquisition by William.

79 Theodore thus unequivocally contradicts the testimony of William at the trial that he purchased the property for Johnson. He even more clearly repudiates William's testimony at the trial that "there was a quit claim deed delivered to Mr. William R. Johnson by my son" (R. 518).

William Goldstein by filing the returns has admitted his trial testimony to be false.—William Goldstein is conceded to have had full knowledge of these returns and to have actively participated in their execution and filing. As agent for Theodore, William Goldstein had authority to make payment of "any tax owed by him" (Gov't Ex. 2(b) on Answer to Amended Motion for New Trial). The deputy collector prepared the returns after conferences with William as agent and William procured Theodore's signature, returned the returns to the deputy collector's office and paid the tax thus indicated (Gov't Ex. 2, p. 3).

⁶ Oaths, required on returns in 1937-1941, were subject to penal sanction (18 U.S.C. Sec. 231); affirmations to the returns for 1942 and 1943 were subject to the same sanctions (26 U.S.C. Sec. 145 (e)).

Goldstein certainly knew all the facts concerning the purchase and ownership of the Albany Park Bank Building. Being subject to the same penal sanctions if the returns are false, he is, equally with Theodore, chargeable with the admission and assertion of ownership contained in the returns, and these returns clearly show that William Goldstein lied when he testified on the trial that he purchased the property "for Johnson", and that Ted Goldstein "subsequently caused a quit-claim deed to be delivered to Johnson" (R. 517-518, 512).

Yet, by the affidavits of Goldstein on the original Motion for New Trial submitted and vouched for by the Government, this Court was led to say that it does—

"not believe that he (Goldstein) perjured himself on the trial and, on the contrary, believes that he was quite circumspect" (R. 515).

Surely this Court cannot longer thus be imposed upon. We may concede that Goldstein's testimony was circumspect in its watchfulness to avoid statements easy to prove perjured; possibly "circumvolution" would be a more accurate description for the sinuous course of his testimony in affidavits throughout this case. In any event, no one can disagree that the solemnly affirmed returns show that William Goldstein did commit perjury..

2. THE THEODORE GOLDSTEIN DELINQUENT AND AMENDED TAX RETURNS FOR 1937 THROUGH 1943 PROVE THE FALSITY OF WILLIAM GOLDSTEIN'S AFFIDAVITS ON THE ORIGINAL MOTION FOR NEW TRIAL.

On the original motion for new trial the Government was faced with an array of affidavits showing action and statements by Goldstein consistent only with ownership in Theodore Goldstein and at war with the testimony of William Goldstein: (a) that he had purchased the Albany Park Bank Building "for Johnson" (R. 517-518, 512); and (b) that "subsequently there was a quit claim deed delivered to Mr. William R. Johnson by my son" (R. 518).

The affidavits on motion for new trial asserted that title to the bank building and the rental moneys were both held in trust for Johnson.—To meet the defendants' ample showing of assertion and exercise of powers of ownership by William Goldstein over rental moneys and by William Goldstein as agent of Theodore with respect to the prop-

erty, the device was adopted of asserting that Theodore Goldstein holds title to the building in trust for William R. Johnson and that the rents on the building which were, as shown above, admittedly paid to William Goldstein (p. 4, *supra*) were by him being held as income of Johnson (R. 252-253).

Goldstein on the original motion did not deny the leasing of the property to the Hines Company nor that he has collected and cashed for his own account the rent checks paid by that company under such lease. However, he attempted to explain his ownership by swearing that the rent money—

"is being held by me until such time as I am released from the Internal Revenue Department which served me with a lien to hold all funds and property belonging to William R. Johnson" (R. 252)..

The same affidavit of Goldstein on the original motion for new trial also stated (R. 253):

81 "Theodore W. Goldstein holds title to the building in trust. The reason that title was not transferred to William R. Johnson was that he requested me to let title remain in my son as he intended to organize a bank sometime in the future and did not want his name connected with it."

"During the years '38 and '39 Mr. Johnson inquired of me how the income was taken care of in reference to income tax—as to whether or not he should report it. I explained to him that the corporation is getting the benefits of the entire income and making all the expenditures and the Albany Park Safe Deposit Vault Company, a corporation, filed their income tax returns every year up to the time Mr. Frank Sampson took possession of the premises."

(Emphasis supplied)

This theory that he and his son were trustees or agents for Johnson was advanced by William Goldstein to justify his activities with respect to the property and retention of the rent moneys in his own name, otherwise explainable only on the theory that he, or Theodore his son, was the real owner of all interest in the property. The veracity of the sworn statement of William that he held the rent money under an Internal Revenue Bureau lien, submitted as it was by the United States Attorney, was thus vouched for by the Government which presumably had full knowl-

edge of its liens and moneys covered by them. With this implied endorsement by the Government itself, this Court apparently accepted the explanation of Goldstein and the Government for it was on this same theory of trust that this Court rationalized the 1941 lease between Theodore Goldstein as lessor and the Hines Company as lessee by holding (R. 512):

"The lease now offered merely shows that in 1941 Ted Goldstein continued to act for whomsoever he represented and adds nothing to what was before the jury."

This Court's denial of the motion for new trial was thus based in part on the acceptance of Goldstein's affidavit that he and his son held as trustees for Johnson.

82 *The tax returns of Theodore Goldstein made under penal sanctions show that William Goldstein committed perjury on the original motion for new trial.*—Both William and Theodore Goldstein are, as shown above, equally responsible for the truthfulness of the representations contained in the tax returns of Theodore Goldstein and that responsibility is, as shown above, enforced by penal sanctions equally grave to each. Yet, by these returns, it is recognized and affirmed that since the date William Goldstein paid the purchase price for the Albany Park Bank Building, that property has been owned by Theodore in his individual capacity, the income therefrom has been his individual income, the real estate taxes thereon are an expense personal to him, depreciation thereon is an exhaustion of an investment owned by him and any income from the building is under applicable law exempt from income taxes in an amount measured by the statutory exemption personal to him. These necessary implications, basic as they are to the computations shown on the returns, are common knowledge even among laymen. Certainly William Goldstein, a lawyer of some 25 years experience, and his son, Theodore, also a lawyer, cannot plead ignorance of applicable elementary principles of law which necessarily attach to the returns as sworn.

There never has been any explanation offered as to how Ted Goldstein, who according to Goldstein's testimony on the trial executed a quit-claim deed of the property to Johnson (R. 518) could nevertheless hold title to the building as trustee, as Goldstein subsequently swore he did in his affidavit in opposition to the original motion for new trial (R. 253).

The returns because of their necessarily implied assertion of complete beneficial ownership in Theodore Goldstein, demonstrate to have been false the affidavits offered by the Government on the original motion for new trial to the effect that the moneys received by way of rental are (R. 252-253):

"being held by me (William Goldstein) until such time as I am released by the Internal Revenue Department which served me with a lien to hold all funds and property belonging to William R. Johnson * * *. Theodore W. Goldstein holds title to the building in trust. The reason the title was not transferred to William R. Johnson was that he requested me to let title remain in my son as he intended to organize a bank some time in the future and did not want his name connected with it."

83 The returns make it impossible for either of the Goldsteins to longer contend that the property has from the beginning been owned beneficially by anyone other than Theodore, or that Theodore in holding title to the property, leasing it and incurring the liabilities and expenses of ownership has been acting for any person other than himself. Neither may it be seriously contended that William Goldstein in retaining the rental moneys did so in a capacity other than that in which the evidence shows he purported to act in receiving it—as agent for Theodore.

Obviously, this Court was misled by the affidavits of Goldstein on the original motion for new trial in holding that the lease by Theodore in 1941 merely showed that—

"Ted Goldstein continued to act for whomsoever he represented and adds nothing to what was before the jury."

It now appearing from Theodore's own returns that he was acting and continued to act for himself alone in executing the lease, the execution of the lease, in which William acted as agent for Theodore, constituted an admission by the latter that he had not purchased the property for Johnson.

The uncontradicted evidence in the record summarized under Points 1 and 2 above is completely consistent with the necessary assertion of ownership, legal and equitable, of the Albany Park Bank Building and in Theodore Goldstein with his receipt as his personal income of the rents of that building. It is completely inconsistent with the

attempted avoidance in the affidavits of Theodore and William Goldstein submitted as Exhibits 1 and 2 to the Government's opposition.

3. THE BUREAU OF INTERNAL REVENUE ON THE FACTS PRESENTED FINDS THEODORE GOLDSTEIN THE ACTUAL OWNER OF THE ALBANY PARK BANK BUILDING SINCE JULY, 1937, AND THAT RENTS OF SAID BUILDING WERE PERSONAL INCOME TO HIM.

If further demonstration of the fact of Theodore's ownership of the property and his receipt of the rents as his personal income be needed, it is to be found in Exhibits 3 and 5 submitted as part of the Government's opposition. These exhibits show that the facts with respect to the purchase, maintenance, management and operation of the Albany Park Bank Building from the date of its purchase in 1937 to the present, the leasing of the premises, the collection of rents thereon, the comingling of rent moneys with Goldstein's other funds,⁸ the failure to file information returns which would have been required had William Goldstein not been collecting the rents on behalf of himself or his son Theodore (26 U.S.C. sec. 147 (a); Treas. Regs 111, sec. 29.147-1), the failure to file any returns showing receipt of this income as fiduciary by either Theodore or William Goldstein (26 U.S.C. sec. 142), and the failure of William Goldstein to name the person for whom he purported to hold the money, Gov't Ex. No. 3, p. 2, on Amended Motion for New Trial (26 U.S.C. sec. 147 (c); Treas. Regs. 111, sec. 29.147-B), all taken together caused Stanley A. Wodrick, Deputy Collector, Edward H. Schulz, his supervisor, and Alfred W. Fleming, Special Agent in Charge, Intelligence Unit, Bureau of Internal Revenue, Philadelphia (Gov't Ex. No. 3, p. 4, Answer to Amended Motion), to concur in the obviously necessary conclusion that the rent income on this property was taxable as the personal income of Theodore Goldstein. On the basis of these facts they rejected Goldstein's absurd contention that Theodore Goldstein had merely held record title to the property and determined that an assessment against Theodore Goldstein should be made unless he paid personal income taxes on the rental in-

⁸ An act hardly consistent with the existence of either an agency or trustee relationship on the part of either of the Goldsteins. See *People v. Hachtman*, 350 Ill. 326, 329.

85 come. To the weight of this conclusion of the Bureau of Internal Revenue there is to be added the conclusion of William and Theodore Goldstein themselves that the liability existed, as evidenced by their filing of the returns and payment of the tax.

Any possibility that Goldstein might have evaded payment of taxes on this property on the theory that he and Theodore were agents for some hitherto undisclosed principal was completely eliminated by Goldstein's claim that he does not know now and never did know who the real owner of the property was (Gov't Ex. No. 3, pp. 2, 3, Answer to Amended Motion). No agency relation can be created without a principal, or consent both by the principal and the agent. It seems hardly necessary to add that Goldstein as a lawyer of over twenty-five years' experience would not subject himself to the potential liabilities attendant on management of property, including the leasing of such property for long terms, without specific authority from the real owner. It is significant also to note that Goldstein's attempt, not only in his trial testimony but in his affidavits submitted by the Government on the original motion for new trial, to place ownership of the rent income in Johnson was completely abandoned. Instead, when he was approached by an agent of the Bureau of Internal Revenue seeking to collect a tax on the rental income he said that he did not know who the owner was. Obviously had Goldstein told the tax collector that the money belonged to Johnson against whom a heavy assessment for allegedly delinquent taxes is outstanding, he would have been required to turn over all the rent money forthwith and any question of payment merely of the taxes would have been submerged in the seizure of all of the income. Goldstein's willingness to swear falsely to Johnson's ownership went all the way to the point where it would cost him money to persist, but he evidently thought that a requirement that he give up all of the income collected on the Albany Park Bank Building would be too high a price to pay for further persistence in his perjury.

86 4. THE GOVERNMENT'S ANSWER DOES NOT DENY, AND IT IS THEREFORE ADMITTED, THAT THEODORE GOLDSTEIN HAS BEEN SINCE JULY, 1937, THE ACTUAL OWNER OF THE BUILDING AND THAT THE RENTS THEREFROM ARE HIS PERSONAL INCOME.

The Government does not in its Answer attempt to deny that the Goldstein tax returns have in law and in fact the

meaning which we attribute to them in our amended motion for new trial. Its attempts to side-step the returns by the following éoteric pronouncement:

"*** we believe that the circumstances under which the returns were filed were such as to dissipate any significant relevance the filing of the returns might otherwise have had***"

There can be no question of the relevance and significance of these returns and no circumstances of any kind under which they were filed can in any way "dissipate" their relevance. Nor can anything short of proof that the returns are false impeach them as evidence. Not only is no such proof offered; there is not the slightest hint of such a suggestion in the Government's Answer. Obviously, if Theodore is not the real owner of the building, the taking of deductions for depreciation on the Albany Park Bank Building against his personal income constitutes a felony by both William and Theodore. If the year 1940 alone be considered, it is plain that this deduction was the instrument by which Theodore evaded payment of a tax on his personal income from sources not connected with the property. It is also obvious that, if Theodore did not receive the rent income as his own, he and William are guilty of a felony in having applied Theodore's personal exemption and the exemption allowed to him as a member of the armed forces to reduce the tax on the return. 26 U. S. C, secs. 145.

(b), 3793. Proof that Theodore is not the real owner of the building and that he did not receive as personal income the rent from the building would establish guilt of both William and Theodore, not merely of a felony involving moral turpitude, but a felony involving false swearing. Any such proof would as effectively destroy Goldstein as a witness at the trial of these cases as does the abundant direct proof in this record that he testified falsely at the trial and swore falsely in his several affidavits submitted by the Government in opposition, both to the original and to the amended motion for a new trial. In short, under any possible view of the evidence or of the returns, Goldstein is shown to be an utterly irresponsible liar under oath.

5. THERE IS NO LEGAL BASIS FOR ACCEPTING GOLDSTEIN'S TESTIMONY SQUARELY CONTRADICTED BY OTHER WITNESSES.

The Government overreaches itself in asking this Court to reject as false the testimony of no less than 14 witnesses,⁹ who under oath squarely contradict Goldstein, in order to hold his testimony true. Nor can the testimony of 88 these witnesses be properly rejected on the ground of bias, past misdeeds, or other direct impeachment, as this Court attempted to do in its memorandum opinion on the original motion for new trial. For example, Henrichsen's evidence may not be rejected or even considered impeached on a mere hearsay statement that he was a participant in a crime. The Federal rule is that proof of con-

⁹ Compare:

Blockus Aff. No. 50 (R. 198) with Goldstein Aff., Gov't Ex. No. 15 (R. 263).

Englebretson Aff. No. 68 (R. 232) with Goldstein Aff., Gov't Ex. No. 1 (R. 243).

Fowler Aff. No. 53 (R. 213) with Goldstein Aff., Gov't Ex. No. 15 (R. 264).

Green Aff. Nos. 5, 18, 54 (R. 100, 125, 216) with Goldstein Aff., Gov't Ex. Nos. 1, 3, 15 (R. 243, 244, 264).

Guild Aff. No. 21 (R. 138) with Goldstein Aff., Gov't Ex. No. 7 (R. 251).

Hess Aff. No. 19 (R. 126) with Goldstein Aff., Gov't Ex. No. 5 (R. 248).

Holleran Aff. No. 20 (R. 128) with Goldstein Aff., Gov't Ex. No. 7 (R. 251).

Huscher Aff. No. 37 (R. 178) with Goldstein Aff., Gov't Ex. No. 11 (R. 260).

J. E. Johnson Aff. No. 58 (R. 221) with Goldstein Aff., Gov't Ex. No. 5 (R. 248).

Sampson Aff., Ex. "E-1" to Amended Motion for New Trial with Goldstein Aff., Gov't Ex. No. 2, Answer to Amended Motion for New Trial.

Schwefer Aff. No. 6 (R. 102) with Goldstein Aff., Gov't Ex. No. 3 (R. 244).

Sullivan Aff. No. 57 (R. 219) with Goldstein Aff., Gov't Ex. No. 7 (R. 251).

W. R. Johnson Aff. No. 69 (R. 233) with Goldstein Aff., Gov't Ex. No. 5 (R. 248).

viction is the only proper method of impeachment. *Glover v. United States*, 147 Fed. 426 (C. C. A. 8); *Coulston v. United States*, 51 F. 2d 178, 182 (C. C. A. 10); *Little v. United States*, 93 F. 2d 401, 407, 408 (C. C. A. 8). The disbarment of Green (R. 498), the possible animosity of Fowler (R. 497) because of a dispute at the time of leaving the employ of the Waukegan Post, the interest of defendant's brother, John E. Johnson (R. 479), the possible interest of Attorney Hess (R. 500) who formerly represented some of the defendants in this case, and indeed the interest of the defendant Johnson himself (R. 479), at most may be considered as impeaching only in testing comparative credibility. These considerations certainly cannot be used as a basis for the exclusion of the evidence itself. *Arnall Mills v. Smallwood*, 68 F. 2d 57, 59 (C. C. A. 5). Far more significant than any of such considerations in the evaluation of any witness; testimony is the element of disinterested corroboration. Henrichsen is minutely corroborated by not less than seventeen completely disinterested witnesses. Green is corroborated and Goldstein squarely given the lie by the completely disinterested Engelbretson. Hess, John E. Johnson, and defendant Johnson, were corroborated each by the other, and the Government itself not merely accepted Hess' version of the meeting in his office but actually filed an affidavit by him concerning it. Fowler is corroborated by the Lidschin and Wait affidavits in a statement which squarely contradicts Goldstein. On the state of the record to date, this Court cannot, and we are confident will not, accept Goldstein and reject as false the evidence of these witnesses.

89. 6. THE GOVERNMENT'S AFFIDAVITS FILED BY THE GOVERNMENT IN OPPOSITION TO THE AMENDED MOTION ARE ENTITLED TO NO WEIGHT.

Goldstein's affidavit (Gov't Ex. No. 2) hardly deserves further comment.¹⁰ It may, however, be pointed out that in it he claims that Sampson, a witness whose prior affidavit, submitted by the Government (R. 315), and which

¹⁰ Attached hereto and hereby made a part hereof as Ex. F. is the affidavit of defendant Johnson reaffirming his trial testimony and categorically denying the allegations in Goldstein's testimony and in his affidavits as to interest in or participation by defendant Johnson in the Albany Park Bank Building.

this Court found truthful on the original motion for new trial (R. 493, 512), swore falsely in his affidavit submitted as Exhibit E-1 to the amended motion for a new trial. In particular, Goldstein denies admitting to Sampson, "Johnson never had any interest in the (Albany Park Bank Building) property and has nothing whatever to do with it." (Gov't Ex. No. 2, def's. Ex. E-1.) The Government thus has the effrontery to ask this Court to find that Goldstein is telling the truth at the expense of holding fourteen different affiants guilty of swearing falsely.¹¹

Theodore Goldstein's affidavit, Exhibit I to the Government's answer, is of little consequence. It demonstrates that he did execute income tax returns asserting the ownership of the Albany Park Bank Building and the receipt by him as personal income of the rents collected, and that he did so upon being told by his father that an assessment against him would be made for the tax due if he failed to file these returns. His affidavit merely evidences a willingness on his part, in an attempt to protect his father from being proved a perjurer, to swear to matters wholly inconsistent with his sworn returns. It will be recalled that Theodore successfully evaded service of a subpoena issued at defendants' request during the trial (R. 343). Even now, when, in defense of his father, he finally appears, he is careful not to confirm William Goldstein's trial testimony to the effect that he (Theodore) delivered a quit-claim deed to Johnson. His tax returns most definitely negatives the possibility that a deed was ever delivered to Johnson. If this Court applies the same test of family relationship in weighing Theodore Goldstein's affidavit as it apparently did in rejecting John Elmer Johnson's affidavit on the original motion for new trial, nothing more need be said about it. With respect to both the Theodore and William Goldstein affidavits, however, it is not amiss to point out that both of these men are mature lawyers. They are charged with a knowledge of the law, not merely legally as a result of a technical presumption but also factually because they have been licensed to practice on the basis of their actual knowledge of it and have through experience since increased that knowledge.

¹¹ See footnote 9.

7. THE AFFIDAVIT OF EDWARD WAIT CANNOT BE SOLELY DISMISSED.

The Government in its answer seeks to brush off the affidavit of Edward Wait (Ex. D to Amended Motion for New Trial) with the statement that "it is certainly not newly discovered evidence." The record shows that Fowler while employed by the Waukegan Post was directed by Goldstein to solicit advertising and printing from the Bon Air Country Club, that he did so and that he had difficulty in collecting the bills for such work. This is sworn by Fowler and sworn to by Goldstein (R. 213, 263). Fowler swears further that Goldstein told him he would collect the bills through Skidmore and that shortly thereafter the bills were paid (R. 214). Goldstein denied this, swearing that he had instructed Fowler to retain an attorney to sue the Bon Air for these bills, that this was done and judgment was recovered for these bills (R. 264). The Government filed an affidavit by Max Lidschin, the attorney who handled litigation between the Post and the Bon Air in the Justice of the Peace Court in Lake County (R. 266).

91 The record shows that both Goldstein and Fowler swore that Fowler's connection with the Waukegan Post terminated in January 1941 (R. 213, 265). Lidschin's affidavit shows that he was requested by letter in September, 1941, to institute the proceedings, that the bill involved was for certain stationery which had even then not yet been delivered and that judgment was obtained for some fifty-seven dollars in October 1941 (R. 266, 267). Wait's affidavit supplies what seemed to us to be evident, namely, specific proof that the order for the stationary which was the subject of the litigation was placed in April, 1941, some four months after Fowler left the Waukegan Post. And Wait's affidavit is supported by a copy of the actual bills showing the date of order.

It therefore appears from Wait's affidavit that the basis upon which this Court rejected Fowler's testimony and accepted Goldstein's was incorrect for it demonstrates that no litigation was ever instituted for the collection of any bills incurred by the Bon Air during any of the time that Fowler was with the paper. The proof that Goldstein's attempt to discredit Fowler's sworn statement was wholly false and fraudulent is highly important. The

reason Goldstein feared Fowler's testimony to the extent of trying through further false statements to discredit him is that Fowler squarely gives the lie to Goldstein's testimony concerning the purchase of the Bon Air Country Club. Fowler states unequivocally that Goldstein told him that he (Goldstein) had purchased the Bon Air for Skidmore with money given him by Skidmore (R. 213).

8. ESTABLISHED PRECEDENT REQUIRES THE GRANTING OF A NEW TRIAL.

A conviction for the crime of giving false testimony may be had on evidence showing merely the improbability of the testimony claimed to be false (*Schonfeld v. United States*, 277 F. 934); and the testimony of one witness which is corroborated is sufficient to obtain a conviction for perjury (*United States v. Palese*, 133 F. 2d 600 (C. C. A. 3); *Holy v. United States*, 278 F. 521 (C. C. A. 7)). The testimony in support of the motion for new trial is clearly sufficient as a matter of law to demonstrate the falsity of Goldstein's testimony. As the Court of Appeals pointed out in *Larrison v. United States*, 24 F. 2d 82, proof for the purpose of a motion for new trial need only be sufficient to "reasonably satisfy" the court of the falsity of the testimony of a material witness. *Obviously, none of the procedural or evidentiary safeguards upon which Goldstein might insist if he were on trial charged with the crime of perjury, are available for use by the Government against the defendants facing imprisonment*, because of Goldstein's false testimony. On the contrary, it is the defendants, facing imprisonment, who are entitled to the benefit of any doubt—not the Government or Goldstein *who is not on trial* (*Hamilton v. United States*, 140 F. 2d 679). See also *Arbuckle v. United States*, F. 2d (U. S. App., D. C.) decided November 13, 1944. There can be no dispute, in the face of established precedent, that material false testimony given by a Government witness requires the granting of a new trial unless it affirmatively appears from the record that the false testimony was harmless error. *Larrison v. United States*, 24 F. 2d 82; *Pettine v. New Mexico*, 201 F. 489 (C.C.A. 8); *McGandless v. United States*; 298 U. S. 342, 347; *Little v. United States*, 73 F. 2d 861, 866 (C.C.A. 10); *Dressler v. United States*, 112 F. 2d 972 (C.C.A. 7); *Vicksburg and*

Exhibit F (Attached to Reply)

Meridian Railroad Co. v. O'Brien, 119 U.S. 104; Miller v. Oklahoma, 149 F. 330 (C.C.A. 8).

In conclusion defendants respectfully submit that upon all the evidence before this Court, the conclusion is inescapable that Goldstein testified falsely at the trial 93 of these defendants, that his false testimony was material and highly prejudicial to them and that without this prejudicial and false testimony the jury *might* have reached a different result.

Wherefore it is respectfully submitted defendants' motion for a new trial should be granted.

(Sgd.) Homer Cummings,
Attorney for William R. Johnson,
Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, Defendants.

(Sgd.) William J. Dempsey,
Attorney for William R. Johnson,
Defendant.

(Sgd.) Harold R. Schradzke,
Attorney for Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, Defendants.

EXHIBIT F.

AFFIDAVIT.

State of Illinois }
County of Cook } ss:

I, William R. Johnson, being first duly sworn upon my oath, depose and say that I reaffirm the testimony given by me in the trial of the case of *United States v. William R. Johnson, et al*, No. 32168, in the United States District Court for the Northern District of Illinois, and in particular I categorically deny the following statements contained in the testimony of William Goldstein (R. 517-518).

I deny that I requested William Goldstein to negotiate for the purchase of the property known as the Albany Park Bank Building, located at 3422-24 Lawrence Avenue, Chicago, Illinois. I also deny that I gave to William Goldstein the sum of \$5,000.00 to make a deposit for the purchase of the aforementioned property; I also deny that I gave to William Goldstein the sum of \$54,887.05 to complete the purchase price of said property; I also deny that I ever gave any sum of money to William Goldstein in the form of currency for the purchase of the aforementioned property. I also deny that Theodore W. Goldstein delivered a quit-claim deed to me at any time for the aforementioned property.

I further deny that Theodore W. Goldstein holds title to the Albany Park Bank Building in trust for me. I further deny that I at any time ever requested William Goldstein or Theodore W. Goldstein to let title remain in the name of Theodore Goldstein because of any intention on my part to organize a bank at any time. I further deny

that during the years 1938 and 1939 I ever inquired of William Goldstein, or any other person or persons, how the income received from the Albany Park Bank Building was taken care of in reference to income tax—or as to whether or not I should report the said income in my income tax returns.

I further deny that William Goldstein at any time stated to me that the Albany Park Safe Deposit Vault Company, Inc., or any other corporation, was getting the benefits of the entire income and making all the expenditures. I further deny that William Goldstein ever stated to me that the Albany Park Safe Deposit Vault Company, a corporation, filed its income tax returns every year up to the time Mr. Frank Sampson took possession of the premises.

I further deny that I ever talked or conversed with William Goldstein at any time regarding the renting of a portion of the premises of the Albany Park Bank Building to Stuart S. Brown, or the amount of rent to be charged Stuart S. Brown, or any other tenants of the building.

I further affirm my testimony and aver that I do not now have and never did have any interest either legal or equitable in the property known as the Albany Park Bank Building, located at 3422-24 Lawrence Avenue, Chicago, Illinois; I further affirm the statement (R. 235) that I have

never at any time discussed with William Goldstein any matters relating to the occupancy, management, rental or income, of the Albany Park Bank Building property, nor have I ever authorized or permitted him to act as my agent for the management of that building.

Affiant further sayeth not.

(Signed) William R. Johnson
William R. Johnson

Subscribed and sworn to before me this 9th day of December, 1944.

(Signed) Martha Medill
Notary Public

96 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32168)

**CERTIFICATE OF COURT AS TO VOLUME VIII
OF THE BILL OF EXCEPTIONS.**

The foregoing Volume VIII of the Bill of Exceptions herein to which this certificate is appended and attached, correctly, accurately and truthfully shows and contains the proceedings had herein that are set forth and referred to in said Volume VIII of said Bill of Exceptions, which said proceedings are as follows:

Petition of Jack Sommers, et al, that they be permitted to take an appeal.

Petition of William R. Johnson that he be permitted to take an appeal.

Order entered March 29, 1944, allowing said appeal by Jack Sommers, et al.

Order entered March 29, 1944, allowing said appeal by William R. Johnson.

Certified copy of order of United States Circuit Court of Appeals entered on November 16, 1944, remanding the cause to the District Court with directions.

Order entered on November 28, 1944, prescribing the time for the filing of the amended motion for a new trial, Government's answer thereto, and reply of defendants, and setting hearing on said motion.

Notice and motion of defendants for production of documents.

97 Order entered November 30, 1944, for production of documents.

Notice and amended motion for a new trial and exhibits attached to and forming part of said motion, filed on December 4, 1944.

Notice and Government's answer to defendants' amended motion for a new trial.

Notice and defendants' reply to Government's answer to defendants' amended motion for a new trial, and the foregoing said Volume VIII of the said Bill of Exceptions is correct and accurate in all respects and is hereby settled, approved, allowed and authenticated as proper in form and as conforming to the truth, and is hereby made a part of the record in this case.

Dated January 19th, 1945.

JOHN P. BARNES,
United States District Judge.

98 On the 15th day of December, 1944, this Court filed a Memorandum Opinion on the defendants' amended motion for a new trial, which said Memorandum Opinion was in words and figures as follows, to-wit:

Filed
Dec. 15.
1944

99 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32168)

MEMORANDUM.

This cause came on to be heard on December 11, 1944, on the amended motion of William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown for a new trial on the ground of newly discovered evidence.

This cause has acquired a long history. The movants and eight others¹ were named as defendants in an indict-

¹ The indictment was dismissed as to four defendants prior to trial, three defendants were acquitted by the jury at the trial, and one defendant died pending review of a judgment of conviction.

ment returned into this court on March 19, 1940. The indictment contained five counts, four of which charged that William R. Johnson wilfully attempted to defeat and evade income taxes for the years 1936, 1937, 1938 and 1939, respectively, and that the other defendants aided and abetted him in so doing. The fifth count charged conspiracy to defraud the United States of income taxes due from William R. Johnson for said years. The defendants pleaded not guilty. The Government was, on motion of the defendants, directed to file a bill of particulars and one was filed. The trial began, before a judge and jury, on August 27, 1940. The presentation of evidence on the part of the Government began on August 28, 1940. William Goldstein, a witness sworn on behalf of the Government, testified on August 30, 1940. Since the present motion is based on the contention that the movants "have uncovered evidence *** which demonstrates *** that William Goldstein *** testified falsely," it is important to keep Goldstein's testimony in mind. The complete record of the testimony of Goldstein, as it appears in the bill of exceptions prepared and filed by and on behalf of the movants and

100 the other convicted defendant appears at pages 55 to 68 of the printed record of the transcript of record filed in the Circuit Court of Appeals for the Seventh Circuit on January 22, 1941, and at pages 516 to 529 of the printed record of the transcript of record filed in said court on January 29, 1944.

The Government rested and the defendants began the presentation of evidence on September 26, 1940. On October 10, 1940, the defense rested and the Government presented evidence in rebuttal and again rested. Counsel argued the case to the jury on October 10 and 11, the jury retired at 3:30 P.M. on the 11th and returned a verdict, finding the movants guilty, in the early morning hours of October 12, 1940. Motions for a new trial and in arrest of judgment by the movants were denied and judgments of conviction² were rendered against the movants on October 23, 1940. On September 15, 1941, the Circuit Court of Appeals for the Seventh Circuit reversed (123 F. 2d 111). On February 2, 1942,

² The sentences of the movants are as follows: William R. Johnson, 5 years and \$10,000 fine; Jack Sommers, 4 years and \$8,000 fine; James A. Hartigan, 3 years and \$6,000 fine; William P. Kelly, 4 years and \$8,000 fine; and Stuart Solomon Brown, 2 years and \$4,000 fine.

the petition of the Government for certiorari was granted by the Supreme Court of the United States (315 U. S. 790). The case was argued in the Supreme Court on April 10, 13, 1942. On May 4, 1942, the Supreme Court ordered a reargument, and the case was argued a second time on October 12, 1942. On June 7, 1943, the Supreme Court filed an opinion reversing the Circuit Court of Appeals (319 U. S. 503). Shortly thereafter, the movants filed in the Supreme Court a motion for a stay of mandate, and, as an exhibit thereto, a proposed motion for remand to the Court of Appeals, so that it might, pursuant to Rule

2(3) of the Criminal Appeals Rules,³ remand the case 101 to this court for the purpose of permitting defendants to file a motion for a new trial. The Supreme Court refused to stay the mandate, but ordered that its denial of the motion for a stay of mandate was "without prejudice to the consideration and disposition by the United States Circuit Court of Appeals for the Seventh Circuit of any motion filed under Rule 2(3) of the Criminal Appeals Rules and any motion collateral thereto." The mandate of the Supreme Court was filed with the Circuit Court of Appeals on July 6, 1943. That mandate remanded the case to the Circuit Court of Appeals "for proper disposition in accordance with the opinion" of the Supreme Court. On July 13, 1943, the movants filed in the Circuit Court of Appeals a motion that the case be remanded to this Court to entertain a motion for a new trial. On October 15, 1943, the Court of Appeals ordered the case remanded to this court "to consider and dispose of any motion

³ Rule 2(3) of the Criminal Appeals Rules is as follows:

"Except in capital cases a motion for a new trial solely upon the ground of newly-discovered evidence may be made within sixty (60) days after final judgment, without regard to the expiration of the term at which judgment was rendered, unless an appeal has been taken and in that event the trial court may entertain the motion only on remand of the case by the appellate court for that purpose, and such remand may be made at any time before final judgment. *In capital cases the motion may be made at any time before execution of the judgment.*"

The italicized words were added to the rule by amendment on May 31, 1938.

The rule was originally promulgated by the Supreme Court of the United States on May 7, 1934, and became effective September 1, 1934.

filed, or which may be filed, under Rule 2(3) of the Criminal Appeals Rules and any motions collateral thereto," and the order provides that "said District Court is hereby authorized to assume jurisdiction of said causes for such purpose." On October 19, 1943, the movants asked leave of this court to file their motion for a new trial. The court granted leave to file the motion and supporting papers within ten days, and at the same time granted the Government a further period of ten days to file its answering papers, and set the hearing on said motion for November 15, 1943. A hearing was held on said date. On December 28, 1943, the court filed a 68 page memorandum, wherein, among other things, the court said:

"The rule of law that governs the court in its consideration of the present motion has never been better nor more succinctly stated than by Judge Lumpkin, who, speaking for the Supreme Court of Georgia in *Berry v. State*, 10 Ga. 511 (1851), said:

"Upon the following points there seems to be a pretty general concurrencey of authority, viz: that it is incumbent on a party who asks for a new trial, on the ground of newly discovered evidence, to satisfy the court, 1st. That the evidence has come to his knowledge since the trial. 2d. That it was not owing to the want of due diligence that it did not come sooner. 3d. That it is not cumulative only—viz; speaking to facts, in relation to which there was evidence on the trial. 4th. That it is so material that it would probably produce a different verdict, if the new trial were granted. 5th. That the affidavit of the witness himself should be produced, or his absence accounted for. And 6th, a new trial will not be granted, if the only object of the testimony is to impeach the character or credit of a witness.

102 "In 14 Eney. Pl. & Pr., p. 791, it is said concerning the foregoing statement of the rule:

"The above proposition was first formulated in *Berry v. State*, 10 Ga. 511, and has been followed in nearly every state, and in some instances incorporated into the statutes and codes of procedure." (Citing cases from Arkansas, California, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Missouri, Nevada, New Hampshire, New Jersey, New York,

North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Vermont, Virginia, West Virginia, Wisconsin, and United States)

"In 9 Cyclopedias of Federal Procedure (2nd Ed.) Sec. 4505, it is said:

'Ordinarily a new trial should not be granted for newly discovered evidence unless it has been discovered since the trial; could not with due diligence have been produced sooner, unless the failure to make it available on the trial resulted from the inexperience and negligence of the attorneys appointed to defend accused; it's not merely cumulative, especially where relating to a collateral matter; is material; is not evidence merely tending to impeach witnesses especially where they testified on a collateral matter; and is likely to produce an acquittal.'

"Cases in the Federal Courts announcing the foregoing rule are the following: *Johnson v. U. S.*, 32 F. 2d 127; *Kithcart v. Met. Ins. Co.*, 119 F. 2d 497; *Weiss v. U. S.*, 122 F. 2d 675, 691; *Evans v. U. S.*, 122 F. 2d 461, 468; *Wagner v. U. S.*, 118 F. 2d 801; *Prisament v. U. S.*, 96 F. 2d 865.

"On the trial, the Government introduced evidence tending to show, among other things, acts of ownership (domination and control) by Johnson of gambling houses, managed by his co-defendants, and the large monetary transactions of such gambling houses, and, also, expenditures by Johnson of sums of money in an amount in excess of his property at a certain date (claimed to be shown by admissions) plus subsequently reported income.

"Since the trial, the parties, from time to time, have referred to two theories of guilt—the 'ownership of gambling house' theory and the 'expenditures' theory. But to separate the evidence touching these two theories and to view the case as presenting only evidence pertinent to one or the other is to assume an artificial view point and one that the jury did not have.

"On the motion now before the court, the defendants concern themselves exclusively with the 'expenditure' theory of guilt. When the court considers this theory, it does so only for the purpose of considering the defendants' arguments and not because it believes

that this viewpoint is the appropriate one from which to consider the case.

"The defendants, by the allegedly newly discovered evidence, attempt to show that the 'expenditure' theory of guilt is not tenable because they say the allegedly newly discovered evidence reduces Johnson's expenditures so that they are \$100,000 less than the sum of his property on a certain date plus subsequently reported income. They contend that the allegedly newly discovered evidence discloses that Johnson owns only one-half instead of all of the Bon Air Country Club, the Curran Farm, the Green House, the White House, the Gas Station, the Dells; and No. 9730 Western Avenue, and that he owns no part of the \$10,000 escrow, the \$7500 escrow or the Albany Park Bank Building.

103. "In order that it may be determined whether the evidence now sought to be presented is 'newly discovered evidence', it is necessary to have in mind in detail (1) the evidence that was presented on the trial, both by the Government and by the defendants, as well as (2) that which might have been presented by the defendants had they fully examined the persons they did not fully examine as witnesses on the trial and now again seek to present, (3) had they placed on the stand as witnesses at the trial the persons they had under subpoena and now seek to present as witnesses for the first time; and (4) had they used diligence in seeking out the persons they now seek to present as witnesses, who were neither presented by them as witnesses at the trial nor under subpoena to appear for them and not presented.

"The ownership of these various properties was a subject of lively interest on the trial.

"On the trial, the Government, in its case in chief, presented evidence showing or tending to show ownership of the afore-mentioned properties. A part of this evidence was that of acts of control over the various properties. When the court outlined this memorandum it intended to insert at this point in narrative form extracts from the testimony of the thirty-nine witnesses who may be said to have testified for the Government concerning ownership or control of one or more of these properties. It was found, however, that to do so would add tremendously to the length of a memorandum already much too long.

Accordingly, the court contents itself with pointing out where in the record the evidence may be found. (References are to be printed Bill of Exceptions filed in the Circuit Court of Appeals).

Evidence of Ownership of the Bon Air Country Club:

Shaw, Tr. 48, 49, 49-51; Goodsell, Tr. 54; Goldstein, Tr. 57-58; Skelly, Tr. 69; Nadherny, Tr. 73, 77, 78, 79, 80, 81, 83, 84, 86, 89; Yoseen, Tr. 89-90; Anderson, Tr. 92; Sommers, Tr. 118; Wendt, Tr. 121, 123, 124, 125; Anderson, Tr. 131; McGinnis, Tr. 135; Goldberg, Tr. 140; Davis, Tr. 142; Kerr, Tr. 143; Fisher, Tr. 144; Paulsen, Tr. 145, 147; Star, Tr. 168; Reedy, Tr. 170, 172, 173; Cervenka, Tr. 228; Kling, Tr. 229; Boras, Tr. 230; DeBettencourt, Tr. 232; Schultz, Tr. 240; Alguire, Tr. 258; Huffman, Tr. 259; Huston, Tr. 260; Leichsenring, Tr. 261; Schafer, Tr. 274; Schmidt, Tr. 336-337; Becker, Tr. 574; O'Neil, Tr. 732; Goodsell, Tr. 775-6.

The Curran Farm:

Goldstein, Tr. 58-59; Skelly, Tr. 69.

The Green House:

Goldstein, Tr. 58; Skelly, Tr. 69.

The White House:

Goldstein, Tr. 58; Skelly, Tr. 69.

The Gas Station:

Goldstein, Tr. 58.

The Dells:

Goldstein, Tr. 59, 67.

104 9730 Western Avenue:

Grushkin, Tr. 41; Goldstein, Tr. 55, 63, 64, 65, 66 (Defs. Ex. J-3); Skelly, Tr. 69; Nadherny, Tr. 74, 75, 76, 79, 83, 84, 85, 89; Sommers, Tr. 118; Arndt, Tr. 263; Lynch, Tr. 282; Nechin, Tr. 312, 313, 314; Moore, Tr. 703.

\$10,000 Escrow:

Goldstein, Tr. 60-61; Skelly, Tr. 69.

\$7,500 Escrow:

Goldstein, Tr. 61; Bibow, Tr. 575-6.

Albany Park Bank Building:

Grushkin, Tr. 41, 42; Goldstein, Tr. 56; Koop, Tr. 588; Brandt, Tr. 595, 596,

"On the trial, the defendants presented evidence showing or tending to show ownership of the aforementioned properties. A part of this evidence was that of acts of control over the various properties.

This evidence may be found at the places in the record hereinafter indicated (Again, references are to the printed Bill of Exceptions filed in the Circuit Court of Appeals).

Evidence of Ownership of the Bon Air Country Club:

Johnson, Tr. 955, 963; Spagat, Tr. 893; Wait, Tr. 896, 897, 898, 900, 910, 913; Hare, Tr. 914; Davis, Tr. 916; Goldberg, Tr. 916; Thele, Tr. 919; Rose, Tr. 923; Smith, Henry M., Tr. 923; Boeye, Tr. 925; Meyer, Tr. 928; Allen, Tr. 929; Sullivan, Tr. 992, 993.

The Curran Farm:

Johnson, Tr. 956, 960; Boeye, Tr. 925; Sullivan, Tr. 992, 993.

The Green House:

Johnson, Tr. 956, 963; Tatge, Tr. 922.

The White House:

Johnson, Tr. 956, 963; Sullivan, Tr. 992, 993.

The Gas Station:

Johnson, Tr. 956, 963; Allen, Tr. 929; Sullivan, Tr. 992, 993.

The Dells:

Johnson, Tr. 955, Defs. Ex. J-3; Herman, Tr. 926; Meyer, Tr. 928; Sullivan, Tr. 992, 993.

9730 Western Avenue:

Johnson, Tr. 950, 955, 973; Creighton, Tr. 862, 886, 871, 872; Sullivan, Tr. 992, 993.

\$16,000 Escrow:

Johnson, Tr. 957; Sullivan, Tr. 992, 993.

\$7,500 Escrow:

Johnson, Tr. 957; Sullivan, Tr. 992, 993.

Albany Park Bank Building:

Johnson, Tr. 952, 955, 977; Sullivan, Tr. 992, 993.

"As has been indicated, on the trial the defendants produced sixteen witnesses some parts of whose testimony had bearing upon the ownership of one or more of the ten items of property whose ownership is now questioned."

105 "T. J. Sullivan, a public accountant, testified for the defense at p. 993 Tr. and eliminated from the computations which had been put into the record by the Government's witness Cliford the following items:

Albany Park Bank Building,	\$ 59,887.05
One-half, The Dells,	7,942.05
One-half 9730 S. Western Ave.	17,757.50
Two Escrows	17,500.00
Bon. Air,	307,170.23

"By means of the testimony of Sullivan, the defense put before the jury the very contention that they are now seeking to present again in the present motion.

"The defendants now tender, as newly discovered evidence, the testimony of Samuel Hare, Eli Herman, William R. Johnson, Joseph J. Nadherny and Albert Tatge. All of these persons testified on the trial, Hare, Herman and Johnson as witnesses for the defense and Nadherny and Tatge during the presentation of the Government's case in chief, but, on motion of the Government, Nadherny was called as the court's witness. The defendants do not present any excuse for having failed to bring out on the trial what they now seek to elicit from these persons. The aggregate of that now sought to be elicited from these persons is slight and the whole of it, with the exception of one item in Johnson's proposed evidence, is merely cumulative of like evidence produced on the trial. The one item in Johnson's proposed evidence is merely impeaching, and Johnson knew of it for two and one-half years without acting.

"The defendants now tender, as newly discovered evidence, the testimony of John W. Garry, Frederick P. Kirschner, William R. Peacock, John S. Piazza, Walter Piper, Jacob Leo Smith and Joseph J. Sperling, all of whom were under subpoena to appear as witnesses for the defense at the trial but were not called to the stand (It would be more accurate to say that subpoenas *duces tecum* were served on Piazza's company and Piper's company). The defendants do not present any excuse for having failed to present these persons as witnesses at the trial. Counsel for Johnson, in his closing argument to the jury, said:

"We haven't undertaken to conceal that Mr. Geary was in my office last week. We told you he was there. He was there. He was there twice. I can't tell you the conversation I had with Mr. Geary. I have no right to go into an explanation here of why he was not produced, but I say to you, ladies and gentlemen, I accept the responsibility for not producing him. That is my job." (Page 6518 stenographer's transcript of Trial Proceedings.)

The evidence now sought to be elicited from these persons who were under subpoena is merely cumulative of like evidence produced on the trial.

"The defendants assert that Goldstein testified falsely in respect of ten separate items. These ten items are: the Bon Air Country Club; the Curran Farm; the Green House; the White House; the Gas Station; the Deils; No. 9730 Western Avenue; the \$7,500 escrow; the \$16,000 escrow; and the Albany Park Bank Building.

"The Court will discuss each of the items listed above, and, in doing so, will quote from the printed bill of exceptions the exact testimony of Goldstein with reference thereto. The court will then consider the defendants' allegedly newly discovered evidence."

106 "The defendants do not point out any affidavit wherein it is stated that Johnson did not give Goldstein the money to purchase the Bon Air Country Club, nor is any claim made that such a challenge to Goldstein's testimony is contained in any affidavit.

"The defendants claim only that Goldstein admitted on several occasions that he had committed perjury on the trial. As Authority for this statement, the defendants point to the affidavits of Green (Nos. 5 and 54), Hess (No. 19), defendant Johnson (No. 69), and his brother John E. Johnson (No. 58).

"Maurice Green, affidavit No. 5, states that subsequent to October, 1940, Goldstein discussed with him the trial of Johnson, and that Goldstein told him that his (Goldstein's) testimony regarding purchases of properties for Johnson was false. No date is fixed for this conversation; it might have been any time between October, 1940, and June 24, 1943, which is the date the affidavit was made. It is further observed that Green says that Goldstein's testimony was false regarding *purchases* of properties for the said William R. Johnson, and this in spite of the fact that Johnson himself corroborates Goldstein's testimony concerning the purchase of Johnson's farm. Johnson has not at any time contended that the purchase of this farm was not handled in the manner in which Goldstein said it was. The purchase of this farm was handled in exactly the same manner as all other transactions which Goldstein testified to in connection with the purchase of property for Johnson. Green is a disbarred lawyer and a person of doubtful credibility.

"In his affidavit, Green further says that about March 15, 1942, Skidmore called him on the telephone

and requested him to come to Skidmore's office, which he did, and that, upon his arrival, he saw Goldstein there; that Skidmore stated he wanted to discuss with Green a partition suit filed in Lake County by John E. Johnson covering the Bon Air Country Club property. Green states that Goldstein said, at that time, that Skidmore could not file an answer, declaring his interest in the properties because, if he did, such an answer would definitely establish Goldstein's testimony on the trial of Johnson as completely false. It seems improbable that Skidmore would call a disbarred lawyer and bakery goods salesman to his office for the purpose of seeking advice in regard to real estate title matters. That he had these conversations with Green is denied by Goldstein in his affidavit (No. 1).

"Green made another affidavit (No. 54) on behalf of the defendants on August 13, 1943. In this affidavit, he describes an alleged meeting with Goldstein in which Goldstein spoke to him concerning Green's previous affidavit. Green says that, at that time, he told Goldstein 'If Skidmore was a man he'd tell the truth and tell you (Goldstein) to tell the truth,' to which Goldstein is said to have replied, 'I can't do that because if I did I would certainly be disbarred and I might as well be dead as disbarred.' It is difficult to believe that Goldstein, after he learned that the affidavit (No. 5) was made by Green, engaged in a conversation with Green and re-stated that he had lied on the trial of the Johnson case. This meeting is supposed to have occurred on *August 11, 1943*, and on *August 13th* Green produced his affidavit No. 54. The matters set forth in Green's affidavit (No. 54) are flatly denied by Goldstein in his affidavit (No. 15). Green discredits himself by the number of opportunities he gives himself to talk to Goldstein and by the improbability of his stories—the improbability that Goldstein would talk to Green after he knew he was unfriendly and the improbability that Skidmore would seek the advice of a disbarred lawyer and bakery goods salesman on a question of real estate law.

"Affidavit No. 19, relied on by the defendants to show that Goldstein committed perjury, was made by Edward J. Hess, attorney of record for Johnson's

co-defendants on the trial. Hess describes what he says was an accidental meeting in his office between Goldstein, Johnson and his brother, John E. Johnson. This affidavit is so vague and the circumstances surrounding the occasion on which the statements of Goldstein are alleged to have been made are such as to make the affidavit worthy of but little consideration. The relationship between Johnson and his co-defendants was so close that the final argument to the jury on behalf of all defendants was made by Johnson's counsel, who also conducted the examination on direct of three of Hess's clients. Johnson, according to Hess, asked Goldstein why he testified that he bought those properties for me when you know you bought them for Skidmore. Why did you lie? to which Goldstein is said to have replied that he was 'sorry that he did.' This could as well be taken to mean that he was sorry he had testified at all, as it could be taken to mean that he was sorry he had testified at all, in the light of the affidavit (No. 5) of Goldstein himself concerning what happened in Hess's office, and the memorandum of an interview with Hess by Special Agent Ralph R. Read (No. 4), cannot be taken to be evidence that Goldstein committed perjury when he testified to the purchase of certain properties for Johnson with money furnished him by Johnson.

"Hess states that this meeting in his office was 'some time subsequent to the filing of the appeal in the United States Circuit Court of Appeals in the case of *United States v. Jack Sommers, et al.*' This is another instance of the failure of the defendants to come within the rule of law requiring defendants to exercise diligence in motions of this type. Nowhere is there any explanation of why, if this is evidence of Goldstein's perjury, it was not called to the attention of the court until after June 16, 1943, the date of the affidavit, and one week subsequent to the decision of the Supreme Court of the United States. This shows not only a lack of diligence but a lack of good faith on the part of defendants in their present action.

"The affidavits of the defendant Johnson and his brother (Nos. 69 and 58) call for little comment. Their interest in the defendants' not having to com-

ply with the judgment of the court is great. A reading of the affidavits of Goldstein, Hess and the two Johnsons, and the statement of Hess to the agent convinces that the meeting was arranged by Hess in order that the two Johnsons might confront Goldstein and persuade him to recant. The court is persuaded that he did not recant. Had he recanted, the defendants would have done something about it then."

"*The Albany Park Bank Building.* Goldstein testified concerning the Albany Park Bank Building as follows. (Tr. 56):

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I did have something to do with the purchase of the property known as the Albany Park Bank Building, at 3424 Lawrence Avenue. I went to the Albany Park Building and interviewed a gentleman by the name of Mr. Larson, who was the chief clerk for Mr. Carter H. Harrison, Junior, who is the receiver for a number of banks closing out. They had an office out at that address. I had a conference with him in connection with the purchase of that building. After making a number of calls and negotiations I submitted an offer. I was requested by Mr. Johnson to go out there and purchase the building for him. The offer was submitted to the Treasury Department at Washington for approval, and the Treasury Department at Washington approved it and I believe I made a deposit with Mr. Larson of \$5000 at the time. I received the money from Mr. Johnson, in the form of currency. There was a notice, I think, published in the newspaper that the building would be sold to the highest bidder at a certain date, at which time I appeared and bid, I think, around sixty thousand, fifty-nine thousand and some-odd dollars for it. I purchased that property at the request of Mr. Johnson. The exact amount of money expended for the purchase of that property I think was around \$59,800. After looking at the closing statement I can state that the amount expended for the purchase of that property was \$59,887.05. I got that from Mr. Johnson in the form of currency. Title to that property was taken in the name of Ted W. Goldstein, my son. Subsequently there was a quit-claim deed delivered to Mr. William R. Johnson by my son. This Albany Park Building property was purchased July 16, 1937.

Johnson, in this testimony, denies that he gave Goldstein the money to purchase this building or that he had anything to do with the purchasing of it. However, defendants have not, in support of the present motion, presented any affidavit stating that the money was not given to Goldstein by Johnson. In other words, the issue as to this property remains the same as that presented to the jury. None of the affidavits now presented shows that Goldstein, in testifying concerning this property, perjured himself, and Goldstein's alleged perjury is the sole basis for defendants' present motion.

Defendants, in their brief, referred to this property, state; "Goldstein has also given Sampson an option to purchase this building" (No. 51). An unsworn letter, signed by one Leon J. Levine, of the Logan Square Realty and Currency Exchange, and addressed to Victor L. Schlaeger, County Treasurer, contains the following statement:

"The lease does not stipulate any clause with reference to an option, but we are informed that an option to purchase agreement is in force, details of which are not known, as this agreement was not produced for an inspection."

One Louis Blum, in an affidavit made November 12, 1943, says that Sampson told him he, Sampson, has an option. An option to purchase would be an asset of the proposed purchaser. In an affidavit (Government's Ex. 23), Frank Sampson, who is the president of Hines Realty and Construction Company, leaseholder now occupying the building, disclaims any such asset personally and for his company, and says that "No oral or written option now exists or has existed for the company or for me to purchase this property."

Defendants call attention to the affidavit of one Leo Blockus (No. 59), who states that on July 28, 109 1943, he had a conversation with Goldstein, at which time Sampson, a tenant of the property, and Levine were present. Blockus further states that during this conversation Goldstein stated four or five times: "The property is mine—you will have to remove the receivers from my property." Denial of these statements is made by Goldstein (Ex. No. 15) and Levine (Ex. No. 13) and Frank Sampson (Ex. No. 14).

"Counsel for Johnson said, in the opening statement to the jury:

"We will prove that Mr. Johnson had absolutely nothing to do with this currency exchange, had no interest in it whatever, he never cashed a check there, he never exchanged money there, he never bought anything, he never bought a money order there, he never received a dime of income from the place.

"Mr. Johnson owned either the building or an interest in the building. It was an old bank building that went broke when banks went broke in this town. It was put on the market to be sold by the receiver. Mr. Johnson either by himself or as a partner with somebody bought this building as an investment. It was then being operated. The safety deposit boxes were being rented and operated for the convenience of the people in the neighborhood and for others.

"We will prove that there was a woman there in charge of these safety deposit boxes and as Mr. Brown's attorney, Mr. Hess, has said that this building was rented by the currency exchange for fifty dollars a month, I think it was, the money was going to the agent who had charge of the building and it was spent for any expenses to maintain the building and Mr. Johnson got no income at all, but Mr. Johnson did own the building, that it did pay an income and that it did return a net result, so the government says in this indictment."

"At the time this statement was made, Johnson and the co-defendants were present in the court-room and no correction was made either during the opening statement or at any time during the trial.

"Consideration of the foregoing, impels the court to the conclusion that the situation with regard to the Albany Park Bank Building, from an evidentiary standpoint, is not affected by any allegedly new material now offered by these defendants, and that the issue as to whether or not Johnson gave Goldstein the money to buy the Albany Park Bank Building for him remains as it was before the jury.

"Having considered in detail each separate item of allegedly newly discovered evidence now proposed

- by the defendants to be presented to a jury, the court finds and holds that each and every such item is excluded from the classification, "newly discovered evidence warranting a new trial" by at least one of the elements of the rule of law applying in such cases and above stated. All but a few items are merely cumulative of other like items presented at the trial.
- 110 No adequate reason has been presented for the delay of more than three years in the presenting of these merely cumulative items. The movants have not been diligent as to these items. All items which are not merely cumulative, are merely impeaching. The merely impeaching items are found in the proposed testimony of defendant Johnson, John E. Johnson, a brother of defendant Johnson; Hess, Attorney at the trial for Johnson's co-defendants; Fowler, a discharged employee of Goldstein, and Green, a disbarred lawyer. All of the defendants have known, or are charged with the knowledge of, all impeaching items which they seek to present through the testimony of Johnson, John E. Johnson, and Hess since the spring of 1941—two and one-half years before they were called to the attention of this court. Johnson has known of the matters proposed to be related by Fowler since at least as early as September, 1942, more than one year ago. No adequate reasons have been presented for these delays. The movants have not been diligent as to these items. Green's impeaching evidence is denied by Goldstein (as are all the other items) and, because of its inherent improbability and its source, is not by the court considered worthy of belief. The court does not believe that Goldstein has recanted, does not believe that he perjured himself on the trial and, on the contrary, believes that he was quite circumspect. The facts are that Goldstein on the trial told (with one exception) only what the various escrow papers and records compelled him to tell. That one exception was the source of currency that he deposited in the various escrows. His testimony as to the source of the currency is corroborated by the facts and circumstances in evidence. Johnson is the one person referred to in the evidence who habitually used currency in large amounts (and not bank checks) and habitually kept very large sums of currency on hand. Goldstein's

purchase for Johnson of the Sunny Acres Farms is a corroborating circumstance. Finally, the court finds and holds that the allegedly newly discovered evidence is not such or of such a nature as on a new trial would probably produce an acquittal. The court concludes that the motion for a new trial on the ground of newly discovered evidence should be denied."

On December 31, 1943, the court made an order giving effect to the views expressed in said memorandum filed on December 28, 1943, and denied the motion for new trial.

The defendants appealed, and, on May 6, 1944, the Circuit Court of Appeals for the Seventh Circuit affirmed (142 F. 2d 588).

The next items in the historical narrative are stated by the movants in their amended motion for new trial as follows:

"Defendants filed a petition for certiorari in the Supreme of the United States requesting a review of the judgment of the Court of Appeals. While this petition was pending, the Solicitor General of the United States formally advised the Supreme Court that William Goldstein had procured and filed certain income tax returns on behalf of his son, Theodore Goldstein, indicating complete equitable ownership, 111 as well as legal title, in Theodore Goldstein of the Albany Park Bank Building from the date of its purchase by William Goldstein. Defendants' request to the Supreme Court that copies of the Theodore Goldstein returns be filed and made available to them was denied on the ground that such returns were not a part of the record in the cause. Defendants thereupon filed a motion in the Supreme Court requesting that Court to defer action on the petition for certiorari until appropriate motion could be filed in the Circuit Court of Appeals to reopen the record in the case. This motion was granted by the Supreme Court and thereafter defendants filed in the Court of Appeals a motion to reopen the cause and for leave to file with this court an amended motion for new trial. ***"

On November 28, 1944, there was filed in the office of the clerk of this court a certified copy of an order which had been rendered on November 16, 1944, in the Circuit Court of Appeals for the Seventh Circuit, which order was as follows:

"WHEREAS, at the October Term, 1944, of the Supreme Court of the United States, there was pending

in that Court defendants' petition for writs of certiorari to this court, and whereas, On October 10, 1944, the Clerk of the Supreme Court of the United States, by letter, informed defendants' counsel as follows:

'I am authorized by the Court to inform you that your motion for deferment of consideration of the petition for certiorari in the cases of Nos. 153-154, *Johnson et al. v. The United States*, is granted. The Court will withhold consideration of the petition conditioned upon the prompt filing in the Circuit Court of Appeals for the Seventh Circuit of a motion to reopen proceedings on the motion for new trial and until the disposition of that motion by the Circuit Court of Appeals.

'This Court should be kept informed by counsel for the petitioners respecting the presentation to and the action taken thereon by the Circuit Court of Appeals upon the motion which affords the basis for deferment of the consideration of these cases in this Court.

Yours very sincerely,

Charles Elmore Cropley.'

WHEREAS, on October 13, 1944, the defendants filed in this Court their motion to reopen the proceedings in this court on their motion for a new trial, and whereas

On October 30, 1944, plaintiff filed its answer to the defendants' motion to reopen that issue, and on October 31, 1944, this court permitted the defendants to file a reply to plaintiff's answer to the defendant's motion, within three days from the date of service of the answer, and that reply was filed on November 4, 1944.

Therefore, this court now reopens the proceedings and vacates its order affirming the order of the District Court denying defendants' motion for a new trial.

The cause is therefore remanded to the District Court, with directions to consider and dispose of the defendants' motion when and if filed in the District Court.

Thereupon the District Court is authorized and instructed to pass upon such amended motion for a new trial, and to certify its ruling to this court at an early date.'

112 On November 28, 1944, this court made an order reciting the filing of the certified copy of the order of the Circuit Court of Appeals for the Seventh Circuit, and directing:

"That the defendants file in the office of the clerk of this court, in writing, on or before the 4th day of December, 1944, such motion and supporting papers as the foregoing order of the United States Circuit Court of Appeals for the Seventh Circuit may authorize; that the United States file in the office of the clerk of this court, in writing, on or before the 7th day of December, 1944, such answer as the United States may deem necessary or advisable; and that the defendants file in the office of the clerk of this court, in writing, before 10 o'clock A. M. on the 11th day of December, 1944, such reply as they may deem necessary or advisable; and that the hearing upon such motion as may be filed pursuant to this order be set for 10 o'clock A. M. on the 11th day of December, 1944;

On November 30, 1944, this court, on motion of the movants, ordered that the United States immediately make available to counsel for the movants, for the purpose of inspection and copying, the income tax returns of Theodore Goldstein for the years 1937, 1938, 1939, 1940, and the amended income tax returns of said Goldstein for the years 1941, 1942, and 1943, and that such inspection be permitted to counsel for the movants in the office of the Commissioner of Internal Revenue in Washington, D. C., not later than 12 o'clock, noon, December 2, 1944, and that certified copies of each said returns be filed with the clerk of this court on or before 10 o'clock A. M., December 2, 1944, which certified copies should be open to the inspection and copying of movants' counsel and to the United States Attorney.

On December 4, 1944, the movants filed their "Amended Motion for New Trial," together with the following: Photostat copies of the individual income tax returns of Theodore Goldstein for each of the years 1937, 1938, 1939 and 1940; photostate copies of the amended individual income tax returns of Theodore W. Goldstein for each of the years 1941, 1942 and 1943; photostat copy of a lease dated January 3, 1944, from Theodore Goldstein to Hines Realty & Construction Company; an affidavit of one Frank Sampson, sworn to on October 13, 1944; an affidavit of one Edward H. Wait, sworn to on December 2, 1944; what purports to be a copy of an unsigned "Answer to

Defendants' Motion to Reopen Proceedings on Motion for New Trial," in the Circuit Court of Appeals; and what purports to be a copy of the "Reply to Government's Answer to Defendants' Motion to Reopen Proceedings" in the Circuit Court of Appeals.

On December 7, 1944, the Government filed its answer to the amended motion for new trial, and attached thereto an affidavit of Theodore W. Goldstein, sworn to on December 7, 1944, an affidavit of Stanley A. Wodrick, sworn to on August 12, 1944, an affidavit of Stanley A. Wodrick, sworn to on December 7, 1944, and an affidavit of one Edward H. Schultz, made on December 7, 1944.

On December 11, 1944, the movants filed their reply to the Government's answer to the amended motion for new trial, and attached thereto the affidavit of the defendant William R. Johnson, sworn to on December 9, 1944.

Oral arguments by counsel for the movants and by counsel for the government were heard by the court on December 11, 1944.

The individual income tax returns and amended individual income tax returns of Theodore Goldstein from 1937 to 1943 show the receipt of income from and depreciation on "One story brick 3424 Lawrence Avenue," which is, of course, the Albany Park Bank Building. Considering the mere filing of the income tax returns aforesaid and disregarding the circumstances of their filing, and assuming, without deciding, that a person who holds the bare legal title to a piece of real estate is under no obligation to file an income tax return in respect of the income thereof and that the person who owns the beneficial title is obligated to file such return, it could probably reasonably be argued that the filing by Theodore W. Goldstein of the returns could be held to be some evidence of the fact that during the years in question he had some interest in the property other than as the holder of the bare legal title. But the filing of the income tax returns cannot fairly be considered without at the same time considering the circumstances of their filing.

The affidavit of Theodore W. Goldstein, sworn to on December 7, 1944, and filed by the Government, shows that he is 32 years of age; that he resides with his parents in Chicago and is presently employed by the Ordnance Department of the United States Government; that from the fall of 1931 to the spring of 1938, he was a student at the University of Illinois, Knox College and Loyola Uni-

versity Law School; that during this period he was not gainfully employed, except during the last three years when he secured part time employment while attending law school; that the income derived from part time employment was spent by him in helping to defray his school expenses; that he is title-holder of record to the property at 3424 Lawrence Avenue, Chicago, upon which property is located the building known as the Albany Park Bank Building; that, while he is the title holder of record, he is not the actual owner of this property and does not have and never did have any beneficial or financial interest, or any interest of any kind, in the property; that he did not purchase the property and did not spend any funds for its purchase and did not have anything whatever to do with the purchase of the building; that the property was not purchased for him in any manner by anyone; that he does not now claim and never has claimed any interest in this property or any income or any interest in any income derived from this property, and has not at any time received any interest, rents, profits or any other income whatever from this property; that he has never regarded himself as the actual owner of the property and has never regarded himself as entitled to any rentals or other income from this property; that he filed income tax returns with the Collector of Internal Revenue for the years 1941, 1942 and 1943; that in these returns he did not claim as income any rentals or other income of the property at 3424 Lawrence Avenue, Chicago, for the reason that he did not then and did not any time regard that property as his or regard himself as entitled to any income from it, and for the further reason that he did not, in fact, receive any income from this property; that copies of the income tax returns for the years 1941 and 1942 are attached to affiant's affidavit, and that said copies are true and correct. Affiant further says that in the summer of 1944 he affixed his signature to delinquent income tax returns for the years 1937 to 1940, inclusive, and to amended income tax returns for the years 1941, 1942 and 1943. Affiant further says that he signed those delinquent and amended returns under the following circumstances: That affiant's father, William Goldstein, told him that the Internal Revenue Department was insisting that returns be filed by affiant as the title holder of record to the property in question; that he, William Goldstein, had fully explained to the Internal Revenue Department that affiant

was merely the record title holder and had no actual interest in the property, and that the Internal Revenue Department was fully advised of the fact that affiant was merely the record title holder and had no interest in the property or its rents, issues, or profits but that the Internal Revenue Department had nevertheless insisted that, as the record title holder, he was required to file delinquent and amended returns for the property in question and that unless such returns were filed an assessment would immediately be made against affiant; that, upon such information being given him by his father, affiant signed the returns despite the fact that he did not claim any interest in the property or any income derived from the property, and, in fact, was not the actual owner of the building and did not receive any profits or other income whatever from the property.

The affidavit of William Goldstein, sworn to on December 7, 1944, and filed by the Government, shows that, during the first part of April, 1944, Stanley A. Wodrick, a Deputy Collector, called at affiant's office and requested affiant to show him a deed executed to Theodore W. Goldstein on the property located at 3424 Lawrence Avenue, Chicago, known as the Albany Park Bank Building; that affiant

looked through his file and could not find the deed; that affiant and Wodrick went over to the Recorder's office, checked through the records and found copy of a deed showing title in Theodore Goldstein; that Wodrick stated that his office had requested him to check on this property and income; that affiant stated to Wodrick that Theodore Goldstein was not the owner of the property, that he was merely the holder of the record title; that Wodrick told affiant that in view of the fact that Theodore Goldstein was the title holder of record, his superior had ruled that Theodore must file returns and pay a tax; that affiant told Wodrick that would not be done; that Wodrick thereafter called on affiant at affiant's office on as many as ten different occasions or more and during the visits affiant and Wodrick discussed the situation; that affiant advised Wodrick at all times that Theodore Goldstein and affiant had absolutely no interest in the property. Affiant further says that Wodrick suggested that affiant call at his office to take the matter up further with Mr. Edward H. Schulz, in charge of the office; that affiant made an appointment for a Saturday morning and called at Wodrick's office, where he met Wodrick, who took affiant into Schulz's

office and introduced affiant; that affiant told Schulz that Theodore was merely the record title holder of the property and not the actual owner; that Schulz took the same position as Wodrick and insisted that returns be filed and a tax paid; that, after further discussion, Schulz and Wodrick stated that the Government was interested in collecting a tax and the only one they could collect it from was the owner who appeared of record; that affiant left the office, after advising Wodrick and Schulz that he would not pay any tax on the rental income. Affiant further says that sometime later Wodrick called affiant at his office and they had a further conversation concerning this matter, and affiant concluded that if Theodore Goldstein failed to file returns and pay a tax that an assessment would be made against him for whatever taxes were claimed to be due; that sometime later, affiant again called on Wodrick at his office; that Wodrick advised affiant that he was working on the figures and would prepare the returns for Theodore's signature; that affiant and Wodrick again discussed the tax and ownership, that Wodrick persisted in his position that Theodore Goldstein, the title owner of 117 record must file returns and pay a tax. Affiant further says that he thereafter again called on Wodrick at his office; that Wodrick handed him the income tax returns which were prepared by him for Ted Goldstein's signature; that affiant took them home with him and had Theodore sign them and returned them to Wodrick's office; that Wodrick acknowledged the signature on the returns; that Wodrick then took affiant to the cashier's cage, affiant paid the tax and walked back to his desk with him; that Wodrick called over one Sherwood Hinman, who is the chief deputy in charge of the northwest side branch, who had replaced Mr. Schulz; that, while sitting there, Wodrick presented to affiant a return, all filled in, showing a tax of over \$13,000; that affiant asked him what it was; that Wodrick told him that, in view of the fact that Theodore is the title owner, they must collect a tax on the \$60,000, which was the purchase price of the property in question; that affiant told Wodrick that he would not pay that under any circumstances, that Theodore had had no money, and, particularly, as great an amount as \$60,000; that Hinman then spoke up and said, "What seems to be the trouble; is the assessment too much money?"; that affiant said "if the amount was only thirteen cents I wouldn't pay it;" that Wodrick retained the return and affiant left his

office. Affiant further says that during the course of one of his conferences with Wodrick, Wodrick presented to affiant at his office a memorandum which read in part as follows: "I have acted as attorney and agent for my son, Theodore, the owner, in the management of the property located at 3424 Lawrence Avenue, Chicago, Illinois, purchased for my son, Theodore, in 1937"; that after looking this statement over, affiant told Wodrick that it was not correct, not true, and affiant refused to sign it; that a copy of said memorandum is attached to this affidavit; that at some later date, when affiant was in Schulz's office at 3256 North Pulaski Road, a new typewritten memorandum was prepared stating that Theodore was the title owner of record, which was signed by affiant; that a copy of this memorandum is also attached to this affidavit. Affiant further says that, at the same time, he reaffirms the testimony given by him in the trial of the case of *United States v. William R. Johnson, et al.*, concerning the Albany Park

118 Bank Building, and, in particular, restates that the amount expended for the purchase of the Albany Park Bank Building property was \$59,887.05, and that affiant got that money from Mr. Johnson in the form of currency; that affiant does not have and never did have any right, title or interest of any kind in the property at 3424 Lawrence Avenue, Chicago, or in its rents, profits, income or issues, and does not now and never has claimed any such right, title or interest.

The affidavit of Stanley A. Wodrick, sworn to on August 12, 1944, and filed by the Government, shows that Wodrick was a Zone Deputy Collector with the Collector of Internal Revenue, United States Court House, Chicago; that his division chief handed him a communication dated April 17, 1944, signed by Daniel J. Conerty, Chief Field Deputy, which said that an anonymous telephone communication had been received stating that the income from the building at 3424 Lawrence Avenue had not been reported by anybody and supposedly the rents were paid by different tenants occupying the property to a William Goldstein, who claims that he is agent for Theodore Goldstein, which communication was assigned to affiant for investigation; that after the receipt of this communication, affiant called first at the Albany Park Bank Building and then at the office of William Goldstein and talked with William Goldstein; that affiant asked Goldstein who the owner of the building at 3424 Lawrence Avenue was; that

Goldstein replied "I do not know the owner;" that Goldstein then asked affiant the reasons for the investigation; that affiant explained to Goldstein that rent received from the Albany Park Bank Building had not been reported by anyone and it was discovered that he, William Goldstein, was acting agent for Theodore Goldstein; that William Goldstein objected to that, saying that Theodore Goldstein was not the owner of the building, but merely title owner of record; that to confirm that statement, William Goldstein and affiant went to the County Building and checked the title; that there they found a record showing Theodore Goldstein as owner; that affiant explained to William Goldstein that since the title shows Theodore Goldstein as the owner, he was the person who was to report rents

119 received from the Albany Park Bank Building, 3424

Lawrence Avenue in his income tax returns for the years 1937 through 1943; that William Goldstein objected to that, stating that Theodore Goldstein was not the actual owner; that, after a few days, William Goldstein agreed to have the returns prepared for Theodore Goldstein, showing the rent income from the Albany Park Bank Building for the years 1937 through 1943; that Goldstein said the reason he was agreeing or wanted to agree and prepare these returns for his son was that he would like to have the matter closed as soon as possible; that affiant prepared income tax returns for the years 1937, 1938 and 1939, showing no tax due; that affiant also requested copies of transcripts of income tax returns for 1940 through 1943, and these are in process of completion for Theodore Goldstein; that when affiant first contacted William Goldstein he declared he did not know who owned the property; he was rather surprised to hear a question as to who was the owner of the building; he said it was all a part of court record, and he also stated that he received money from persons unknown for the purchase of that building; he also stated that he did not know whether it was Skidmore's or Johnson's money; that affiant also asked William Goldstein the purpose of placing the title in Theodore Goldstein's name, and he replied that at one time William Johnson had an idea of opening a bank, to be located in the building at 3424 Lawrence Avenue, known as the Albany Park Bank Building, and he did not want to disclose the identity of the owners of the building to the people in the neighborhood; that affiant asked Goldstein whether the rent money was held in an account for the

purpose of returning that money to the person or persons to be later identified as the owners of the building, and Goldstein replied that he merely kept the money but did not have a special account for that purpose; that affiant's reason for asking that question was to ascertain the person liable for income tax based on rental income received from the tenants of the building; that affiant told William Goldstein that the income received from the building should be reported on the income tax returns of Theodore Goldstein since he was the owner of record; that William Goldstein stated that Theodore Goldstein was not the owner and that he was the title owner of record and, as such, could 120 not be held liable for the tax; that affiant then explained to William Goldstein that since the title shows the name of Theodore Goldstein, he was the individual or person who should report the income received from the building; that the first time William Goldstein was approached on the subject he disagreed, stating that Theodore Goldstein was not the actual owner; that after a few days, affiant called on William Goldstein and at that time he agreed to have the returns prepared in the name of Theodore Goldstein; that affiant told William Goldstein that he proposed to report approximately \$60,000 income on Theodore Goldstein's 1937 income tax return as being income received in that year on the purchase of the Albany Park Bank Building; that William Goldstein disagreed very strenuously to the extent that he stated that he did not think any court in the country would uphold the assessment, he stated that, since the money had never been received by Theodore Goldstein, he did not see how we could proceed on the basis that \$60,000 was income to Theodore for the year 1937. Affiant further says that he has seen the unsigned and undated typewritten memorandum which reads, in part: "I have acted as attorney and agent for my son, Theodore, the owner, in the management of the property located at 3424 Lawrence Avenue, Chicago, Illinois, purchased for my son Theodore, in 1937;" that said statement was in my possession at one time; that said statement was given to me by Edward H. Schultz, Division Chief of the Northwest Division Office; that affiant did not receive said statement with the original assignment; that the approximate date that affiant received the statement was about a week prior to June 13, 1944; that Schultz said to affiant at the time he handed

the memorandum to affiant that he wanted William Goldstein to sign the statement; that affiant does not recall that Schultz gave any reason for having the statement signed by William Goldstein; that affiant took the undated memorandum to William Goldstein and asked him to sign it; that William Goldstein gave reasons why he could not sign the memorandum; that William Goldstein stated that he could not sign a statement like that; that William Goldstein objected to the words contained in the memorandum, namely, "the owner" and "purchased for my son, Theodore, in 1937;" that those words appear in the first paragraph of the memorandum; that it was then suggested to William Goldstein that he word his own statement, one that he thought would be suitable, and properly sign it; that Edward H. Schultz, the Division Chief, made that suggestion to William Goldstein at a conference in Schultz's office, no other persons being present; that the letter, addressed to the Honorable Carter H. Harrison, Collector, U. S. Court House, Chicago, dated June 13, 1944, signed by William Goldstein and which reads in part: "Reference is made to rental income from property located at 3424 Lawrence Avenue, Chicago, Illinois, which has not been reported in income tax returns by my son, Theodore Goldstein, title owner of record, and which was received by me as agent." is the statement dictated and signed by William Goldstein.

An affidavit of Stanley A. Wodrick, sworn to on December 7, 1944, and filed by the Government, states that he has examined the statement made by him on August 12, 1944, and wishes to make a correction in a portion of it; that is, in response to the question:

"What else did William Goldstein say at that particular time in regard to the collection of rents or the ownership of that property?"
to which he answered:

"He was rather surprised to hear a question as that as to who was the owner of the building. He said it was all a part of court record and the testimony previously given, and he also stated that he received money from persons unknown for the purchase of that building."

that what affiant meant and intended to say at that time was that Goldstein stated to affiant that he did not know whose money it was that he had received for the purchase

of that building; that at no time did affiant ask Goldstein who gave him the money for the purchase of that building and at no time did he say that unknown persons gave him the money to purchase that building.

122 The affidavit of Edward H. Schulz, sworn to on December 7, 1944, and filed by the Government, shows that he is Division Chief in Charge of the Miscellaneous Tax Squad of the Field Division of the Treasury Department, Internal Revenue Bureau, Chicago; that in the latter part of April, 1944, while he was Division Chief in Charge of the Northwest Division Office of the Field Division, located at 3256 North Pulaski Road, Chicago, he received an assignment from the Chief Field Deputy to institute an investigation for the purpose of determining the identity of the persons interested in or receiving income from a building located at 3424 Lawrence Avenue, Chicago, that pursuant to this assignment, he instructed Stanley A. Wodrick, a deputy collector, attached to his office, to conduct such investigation; that thereafter and during the course of such investigation, affiant had conversations on three or four occasions with William Goldstein relative to the interest, if any, of Theodore Goldstein in the property at 3424 Lawrence Avenue, Chicago; that in these conversations William Goldstein at all times stated that Theodore Goldstein was the title owner of record of the property only and was not the actual owner of it; that Goldstein was very definite in making this fact understood; that, as Division Chief affiant told William Goldstein that Theodore Goldstein, as title owner of record, was required to file income tax returns on this property even though the claim was made that Theodore Goldstein was not the actual owner of the property. Affiant further states that after William Goldstein had informed him that Theodore Goldstein was title owner of record only, he received a communication in the form of typewritten suggestions from the office of the Chief Field Deputy, a copy of which is attached to the affidavit; that affiant requested William Goldstein to sign an affidavit embracing the suggestions contained in the typewritten suggestions forwarded to affiant; that Goldstein read the typewritten suggestions, and stated that he would not sign any affidavit containing any statement that his son Theodore was "the owner" of the property located at 3424 Lawrence Avenue, Chicago, or containing any statement that he purchased that property for his son, Theodore, and, at the same time he reiterated his

statement that his son Theodore was not the owner of that property but was merely the title owner of record.

123. The affidavit of William R. Johnson, sworn to on December 9, 1944, and filed by the movants, states that he reaffirms the testimony given by him on the trial, and particularly denies that he requested William Goldstein to negotiate for the purchase of the Albany Park Bank Building, that he gave William Goldstein \$5000 to make a deposit for the purchase of said property, that he gave William Goldstein \$54,887.05 to complete the purchase price of said property, or that he ever gave any money to William Goldstein in the form of currency for the purchase of said property, or that Theodore W. Goldstein delivered a quit-claim deed to him at any time for said property; that he further denies that Theodore W. Goldstein holds title to the Albany Park Bank Building in trust for affiant, that he at any time requested William Goldstein or Theodore Goldstein to let title remain in the name of Theodore Goldstein because of any intention on his part to organize a bank, or that during the years 1938 and 1939 he ever inquired of William Goldstein or any other person how the income received from the Albany Park Bank Building was taken care of in reference to income tax or as to whether or not affiant should report said income in his income tax returns; that affiant further denies that William Goldstein at any time stated to him that the Albany Park Safe Deposit Vault Company, a corporation, filed its income tax returns every year up to the time Frank Sampson took possession of the premises; that affiant further denies that he ever talked with William Goldstein regarding the renting of a portion of the premises of the Albany Park Bank Building to Stuart S. Brown, or the amount of rent to be charged Brown or any other tenants of the building; that affiant affirms his testimony and avers that he does not now have and never did have any interest either legal or equitable in the Albany Park Bank Building, that he affirms the statement that he never at any time discussed with William Goldstein any matters relating to the occupancy, management, rental or income of the Albany Park Bank Building property, or that he ever authorized or permitted him to act as his agent for the management of that building.

124. The movants have filed with their motion a photostatic copy of a lease dated January 3, 1944, between Theodore Goldstein and the Hines Realty & Construction Co.,

denising the Albany Park Bank Building for a period of ten years from October 1, 1946.

The movants also filed an affidavit by Frank Sampson, sworn to on October 13, 1944, wherein affiant states that he has known William Goldstein for approximately 38 years; that on September 15, 1941, he discussed with William Goldstein the leasing of the Albany Park Bank Building; that after several discussions with William Goldstein, affiant entered into a lease on September 29, 1941, the parties being Theodore Goldstein by William Goldstein, Agent, as lessor, and Hines Realty & Construction Company by F. Sampson, President, as Lessee; that said lease was for the period beginning on September 29, 1941, and expiring on September 30, 1946, at a monthly rental of \$250 to and including September 30, 1943, and \$300 per month for the remaining period; that affiant has paid the rental to said William Goldstein as agent for Theodore Goldstein each and every month in accordance with the terms of said lease to and including September, 1944; that it has been a general custom of William Goldstein to come to the Albany Park Bank Building each month for the collection of the monthly rental; that on some occasions, however, Goldstein requested affiant by telephone to mail him the rental check; that William Goldstein has never at any time stated to affiant that William R. Johnson had any right, title or interest in the building; that during the month of November, 1943, affiant stated to William Goldstein that affiant was interested in the organization of a bank to be operated in the building and that affiant was desirous of obtaining from him a lease for a longer period of time than the lease which was in existence; that affiant explained to William Goldstein that it would be necessary to have an option to renew the present lease for an additional period of ten years before he could attempt to organize a bank; that Goldstein said it was not necessary for affiant to have an option of renewal, as affiant could stay in possession of the premises as long as affiant wished; that affiant explained to Goldstein that it would necessary for affiant to have the option of renewal in writing; that 125 Goldstein replied by stating that he could not give affiant an option for extension at that time, that affiant would have to wait until the court ruled in the Johnson case which was then pending before Judge Barnes; that affiant then asked Goldstein if Johnson had anything to do with

the property, and Goldstein replied, "Johnson never had any interest in the property and has nothing whatever to do with it;" that affiant discussed the question of an option for an extended period of time with Goldstein on five or six occasions between November, 1943, and January 1, 1944; that during the latter part of December, 1943, in discussing the matter of an option for an extended period of time, William Goldstein suggested that affiant prepare a lease in conformity with affiant's ideas on the matter; that affiant prepared said lease and submitted it to Goldstein; that at that time affiant explained to William Goldstein that it would also be necessary for affiant to have the lease signed by his son Theodore Goldstein, who was owner of the property rather than William Goldstein, as agent as was done with the five-year lease; that William Goldstein told affiant that his son Theodore was in the Armed Forces of the United States and that it would be necessary for him to bring the lease to his son Theodore for the purpose of having Theodore place his signature on the lease; that Goldstein said he and his wife were going to Hot Springs, Arkansas, and that his son was stationed close by and while visiting there he would visit with his son and obtain his signature to the lease; that on January 3, 1944, William Goldstein presented to affiant a lease in which the Hines Realty and Construction Company is lessee, of which corporation he is president, and Theodore Goldstein as lessor, for the Albany Park Bank Building for a term of ten years beginning on October 1, 1946, and ending September 30, 1956, at a monthly rental of \$300; that said lease provides that the lessee agrees to deposit with the lessor the sum of \$6000 to be held as security for the payment of the rent for the last 20 months under the terms thereof, provided the said money shall be used by Theodore Goldstein to pay said sum of money upon the delinquent general real estate taxes past due upon the property; that said lease further provides that lessee shall have the right to assign said lease upon the formation of a bank prior to July 15, 1944; affiant further says that on or about July 10, 1944, he had a further discussion with William Goldstein; that affiant, realizing that he would be unable to open a bank on or before July 15, 1944, requested William Goldstein, as agent for Theodore, to extend the time limitation from July 15, 1944, to September 15, 1944; that on July 13,

1944, William Goldstein as agent for Theodore Goldstein, addressed a letter to affiant wherein William Goldstein, as the agent for Theodore Goldstein, extended the time limitation to affiant for the opening of the bank to September 15, 1944.

William Goldstein, in his affidavit above referred to, made on December 7, 1944, and filed by the Government, said that he has read the affidavit of Frank Sampson dated October 13, 1944; that in affiant's discussion with Sampson relating to an option to renew the lease then in existence he did not state to Sampson that it was unnecessary for him to have an option of renewal as he could stay in possession of the premises as long as he wished, that at no time did affiant make any such statement to Sampson; that neither at that time nor at any other time did affiant say to Sampson in connection with an option for extension of the lease that Sampson would have to wait "until the court ruled in the Johnson case which was then pending before Judge Barnes;" that at no time did affiant state to Sampson that "Johnson never had any interest in the property and has nothing whatever to do with it."

The movants also file an affidavit of Edward H. Wait, sworn to on December 2, 1944, wherein he states that on or about April 16, 1941, he caused an order for envelopes and letter-heads for the Bon Air Country Club to be placed with the Waukegan Post, Inc., located in Waukegan, Illinois; that on or about July 8, 1941, the Waukegan Post, Inc., addressed an invoice to the Bon Air Country Club which invoice stated the merchandise ordered, the price of the merchandise and the date that the merchandise was ordered, namely, April 16, 1941; that payment of said invoice was not made to the Waukegan Post, Inc., because of a controversy concerning the price and failure to deliver the merchandise ordered; that a proceeding 127 in debt was instituted in October, 1941, before Harry

Hoyt, Justice of the Peace of Lake County, Illinois, wherein the Waukegan Post, Inc., was plaintiff and the Bon Air Catering, Inc., was defendant; that summons was issued October 7, 1941, and was returnable October 14, 1941; that judgment was rendered in favor of the plaintiff in the sum of \$57.60; that subsequently this judgment was satisfied upon delivery of the merchandise; that invoice above referred to was the only invoice rendered to the Bon Air Country Club or the Bon Air Catering, Inc., by the Waukegan Post,

Inc., that resulted in litigation or judgment in any court, to the best of affiant's knowledge; that affiant was associated with the management of and has had charge of and full knowledge of the ordering and receipt of merchandise for the Bon Air Country Club and the Bon Air Catering, Inc., from the inception of business operations in May, 1938, to January, 1942; that attached is a photostatic copy of the invoice referred to, which is marked Exhibit D; that the pencil notations appearing on the invoice were made subsequent to receiving it.

The foregoing are all of the supposedly evidentiary papers which have been filed by either movants or the Government on the amended motion for new trial, with the exception of two papers filed by the movants, one being "Answer to Defendants' Motion to Reopen Proceedings on Motion for New Trial," and the "Reply to Government's Answer to Defendants' Motion to Reopen Proceedings," both filed in the Circuit Court of Appeals. The court assumes that these papers were filed to advise this court of the proceedings in the Circuit Court of Appeals. They do not seem to have any other bearing on the questions now before this court.

128. The court has observed that the filing of the income tax returns above referred to by Theodore Goldstein cannot fairly be considered without at the same time considering the circumstances of their filing, which circumstances have been detailed in the affidavits above referred to of Theodore Goldstein, William Goldstein, Stanley A. Wodrick and Edward H. Schulz. Those circumstances clearly negative any possibility of its being reasonably contended that the filing of the returns by Theodore Goldstein can be held to be any evidence that during the years in question he had some interest in the premises other than as the holder of the bare legal title. The affidavits of William Goldstein, Wodrick and Schulz do disclose an extraordinary and remarkable effort upon the part of Daniel J. Conerty, Chief Field Deputy, through Edward H. Schulz, Division Chief in Charge of the Northwestern Division Office of the Field Division of the Treasury Department, Internal Revenue Bureau, and Stanley A. Wodrick, deputy collector of Internal Revenue, to induce and procure William Goldstein to sign a statement, prepared in the office of the Chief Field Deputy, containing the following sentence: "I have acted as attorney and

agent for my son Theodore, the owner, in the management of the property located at 3424 Lawrence Avenue, Chicago, Illinois, purchased for my son Theodore in 1937." The affidavits not only of William Goldstein but also those of Schulz and Wodrick show that Mr. Connerty did not succeed in this effort; and that Goldstein at all times refused to sign the statement requested. But, considered in the light most favorable to the movants and disregarding the circumstances of their filing, the income tax returns are excluded from the classification "newly discovered evidence warranting a new trial" by at least two of the elements of the rule of law applied in such cases, and above stated. It cannot be said of these income tax returns that they are so material they would probably produce a different verdict if a new trial were granted.

Neither can it be said that they are not cumulative only. 129 They clearly speak of facts in relation to which there was evidence on the trial. As a matter of fact, there was not only evidence on the trial as to the ownership of the Albany Park Bank Building in William R. Johnson, but there was an express admission by counsel for William R. Johnson in his opening statement of ownership by Johnson of this building. Counsel in his opening statement said:

"Mr. Johnson owned either the buildings or an interest in the buildings. It was an old bank building that went broke when banks went broke in this town. It was put on the market to be sold by the receiver. Mr. Johnson either by himself or as a partner with somebody bought this building as an investment. * * Mr. Johnson got no income at all, but Mr. Johnson did own the building. * * *

In the light of that admission made on the trial, it approaches the absurd and fantastic that courts should now, more than four years later, be considering motions for a new trial on the ground of newly discovered evidence as to the ownership of the building whose ownership was admitted.

The lease, dated January 3, 1944, from Theodore Goldstein to the Hines Realty & Construction Company, presented on this amended motion for new trial, is of no greater evidentiary value than the lease which was presented on the motion for new trial filed in 1943. Of that, this court said:

"The movants also present a lease, bearing date the next day July 7, 1937, from Ted. W. Goldstein to Albany Park Safe Deposit Vault Company and demising the vaults and safe deposit boxes for the period of one year. This is not inconsistent with Goldstein's testimony on the trial."

The same may be and is said of the lease now presented. The movants also present the affidavit of Edward H. Wait. Wait was one of the original defendants, who was tried with the movants and acquitted. He testified that he was 72 years of age at the time of trial, that in 1893 he came to Chicago and became a professional poker player and since that time, with some interruptions, he had operated gambling houses in and around Chicago. His affidavit is by the movants contended to corroborate Fowler and contradict Attorney Max Lidsehin, whose affidavits were presented on the motion for new trial made in 1943. The court does not think it has that effect.

130 Having considered in detail each separate item of allegedly newly discovered evidence, including not only that now proposed by the movants to be presented to a jury, but also that by their motion filed in 1943 proposed by the movants to be presented to a jury, the court finds and holds that each and every such item is excluded from the classification "newly discovered evidence warranting a new trial" by at least one of the elements of the rule of law applying in such cases and above stated. All but a few items are merely cumulative of other like items presented at the trial. No adequate reason has been presented for the delay of more than four years in the presenting of these merely cumulative items. All items which are not merely cumulative, are merely impeaching. The merely impeaching items are found in the proposed testimony of defendant Johnson, John E. Johnson, a brother of defendant Johnson, Hess, attorney at the trial for Johnson's co-defendants, Fowler, a discharged employee of Goldstein, Green, a disbarred lawyer, and Sampson, who makes an affidavit filed December 4, 1944. All of the defendants have known, or are charged with knowledge of, all impeaching items which they seek to present through the testimony of Johnson, John E. Johnson, and Hess since the spring of 1941, two and one-half years before they were called to the attention of this court. Johnson has known of the matters proposed to be related

by Fowler since at least as early as September, 1942, more than one year before it was presented. No adequate reasons have been presented for these delays. The movants have not been diligent as to these items. Green's impeaching evidence is denied by Goldstein (as are all the other items) and, because of its inherent improbability and its source, is not by the court considered worthy of belief. Sampson's alleged impeaching evidence is not in fact impeaching and furthermore is denied by Goldstein. The court does not believe that Goldstein recanted, does not believe that he perjured himself on the trial and, on the contrary, believes that he was quite circumspect. The facts are that Goldstein on the trial told (with one exception) only what the various escrow papers and 131 records compelled him to tell. That one exception was the source of the currency that he deposited in the various escrows. His testimony as to the source of the currency is corroborated by the facts and circumstances in evidence. Johnson is the one person referred to in the evidence who habitually used currency in large amounts (and not bank checks) and habitually kept very large sums of currency on hand. Goldstein's purchase for Johnson of Sunny Acres Farms is a corroborating circumstance. Finally, the court finds and holds that the allegedly newly discovered evidence is not such or of such nature as on a new trial would probably produce an acquittal. The court concludes that the amended motion for a new trial on the ground of newly discovered evidence should be denied.

The court's consideration of the present amended motion has included a consideration of the files and records of this court in this case and all proceedings had and evidence received on the trial of this case. The court's recollection of what transpired on the trial has been refreshed by an examination of: (a) The Government's and defendants' transcripts of the proceedings on the trial, including opening statements and arguments to the jury; (b) the bill of exceptions prepared and filed by the defendants of certain of the proceedings on the trial; and (c) the printed transcript prepared by the clerk of the Circuit Court of Appeals and used on the appeals to that court in this case on the motion of one year ago. The court directed both the Government and the defendants to produce their respective transcripts of the proceedings on the trial for the use of the court and so that it might refresh its recollection of what transpired at the trial. Both sides

complied with this order but the defendants objected to the court's use of the transcripts because they said there are errors in the transcripts. The court directed counsel for the defendants to point out any errors in the transcripts within five days. None was pointed out within that time or at any time, but the court did receive a letter from counsel for defendants, a copy of which is attached to the court's memorandum filed December 28, 1943 and marked Exhibit 2.

132 The court's consideration of the present motion has also included, of course, a consideration of all affidavits and papers and briefs filed by movants, as well as those filed by the Government, and all oral arguments made by counsel for each side.

The court desires that not only this memorandum but also the memorandum filed December 28, 1943, be considered in connection with the order denying the amended motion for a new trial.

The court is signing an order denying the amended motion for a new trial.

(Sgd.) John P. Barnes,
Judge.

December 15, 1944.

133 On the 15th day of December, 1944, the cause came on to be heard on the defendants' amended motion for a new trial, and the following proceedings were had:

(Caption—Barnes, J.)

134

Friday, December 15, 1944.
2 o'clock p.m.

Present:

Mr. Hurley and Mr. Finn, for the Plaintiff.
Mr. Dempsey and Mr. Schradzke, for the Defendants.

The Court: I am filing a memorandum and an order, gentlemen. Counsel may note exceptions at the foot of the order, if they like, and there is a copy of the papers for the parties on each side.

Is there any thing else?

The Clerk: No.

Mr. Schradzke: Will your Honor be in any further this afternoon?

The Court: I won't be here very long.

Mr. Dempsey: If your Honor please, in the event your Honor's order denies the motion, may we be allowed an appeal on behalf of all the defendants?

The Court: Yes.

Mr. Dempsey: Thank you, your Honor.

The Court: You want that to show now?

Mr. Schradzke: Yes, sir.

Mr. Dempsey: Yes, sir.

(Which were all of the proceedings had at said time and place.)

136 State of Illinois }
County of Cook } ss.

Frederick Julian, being first duly sworn, on oath deposes and says that he is and has been for many years last past a shorthand reporter practicing his profession in the City of Chicago, Illinois; that he reported the above and foregoing proceedings before Judge John P. Barnes on the 15th day of December, A. D. 1944, in the case of United States of America versus Johnson, et al., and that the same is a true and correct transcript of what transpired at said time and place.

(Signed) Frederick Julian.

Subscribed and sworn to before me this 4th day of January, A. D. 1945.

(Seal)

(Signed) E. L. Drummond,
Notary Public.

138 Thereupon, over the objection of all of the defendants, this Court on the 15th day of December, 1944, entered an order denying the defendants' said amended motion for a new trial, to the entry of which said order the defendants then and there duly excepted, and which said order was in words and figures as follows, to-wit:

139 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois

Entered
Dec. 15,
1944

Eastern Division

(Caption—No. 32,168)

ORDER.

This cause having come on to be heard on December 11, 1944, on the amended motion of the above named defendants for a new trial on the ground of newly discovered evidence;

And the court, in passing on defendants' amended motion, having taken into consideration the written motions of defendants filed October 29, 1943, the amended motion filed December 4, 1944, all affidavits and all other material filed by defendants in support of said motions, the answers of the Government with the affidavits and other material filed by the Government in support of its answers, the briefs of the parties on both sides, and having heard and considered arguments of counsel for the parties, and having considered also all of the files and records of this court in this cause and all proceedings had and evidence received on the trial of said cause;

And the court's recollection of what transpired on the trial having been refreshed by an examination of (1) the Government's and defendants' transcripts of the proceedings on the trial, including opening statements and arguments to the jury; (2) the bill of exceptions prepared and filed by the defendants of certain of the proceedings on the trial, and (3) the printed transcript prepared by the clerk of the Circuit Court of Appeals and used on the appeals to that court in this cause;

And whereas the Court, having so considered in detail each item of allegedly newly discovered evidence presented by the defendants in support of their motions for a new trial, finds and concludes:

1. That none of these items of allegedly newly discovered evidence constitutes "newly discovered evidence warranting a new trial;"

2. That all but a few items are merely cumulative of other like items presented at the trial, and no adequate reason has been presented for the delay in the presenting

172 *Order Denying Amended Motion for New Trial*

of these merely cumulative items; and that the defendants have not been diligent as to these items;

3. That all items which are not merely cumulative are merely impeaching, the impeaching items being found in the proposed testimony of the defendant Johnson, John E. Johnson, a brother of defendant Johnson, Hess, attorney at the trial for Johnson's co-defendants, Fowler, a discharge employee of Goldstein, and Green, a disbarred lawyer; that insofar as the proposed testimony of all these individuals mentioned, except Green, is concerned, the defendants have not been diligent and have presented no adequate reason for their lack of diligence; and that the proposed testimony of Green is inherently improbably and because of this and because of its sourcee is not worthy of belief; the allegedly impeaching testimony of Sampson is not in fact impeaching when the terms of Goldstein's testimony on the trial are considered;

4. That Goldstein has not recanted, and did not perjure himself on the trial; that Goldstein's testimony concerning the source of curreney utilized in the purchases and proposed purchases of properties mentioned by him is corroborated by facts and circumstances in evidence at the trial;

5. That the allegedly newly discovered evidence is not such or of such a nature as on a new trial would probably produce an acquittal;

141 6. That the amended motion for a new trial on the ground of newly discovered evidence should be denied;

All in accordance with and more fully set forth in the opinion of this Court entitled "Memorandum" filed with the clerk of this court as a part of the records and files in this cause on December 28, 1943, and the opinion of this court entitled "Memorandum" filed with the clerk of this court as a part of the records and files of this cause on December 15, 1944.

Wherefore, It Is Ordered that the defendants' amended motion for a new trial be and it is hereby overruled and denied; and

Whereas the order of the Circuit Court of Appeals for the Seventh Circuit rendered November 16, 1944, a certified copy whereof was filed in the office of the clerk of this court on November 28, 1944, provides:

"Thereupon the District Court is authorized and instructed to pass upon such amended motion for a new trial, and to certify its ruling to this court at an early date."

It Is Ordered that the clerk of this court forthwith file a certified copy of this and the foregoing order in the office of the clerk of the Circuit Court of Appeals for the Seventh Circuit.

Enter:

(Sgd.) John P. Barnes,
Judge.

Dated at Chicago, Illinois, this 15th day of December, 1944.

All Defendants duly except.

142. Thereupon on the 19th day of December, 1944, the defendant, Stuart Solomon Brown, filed a notice of a motion to modify the order entered December 15, 1944, denying the defendants' amended motion for a new trial, which said notice was in words and figures as follows, to-wit:

Filed
Dec. 19
1944

143 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32,168)

NOTICE.

To:

Hon. J. Albert Woll,
United States Attorney,
450 U. S. Courthouse,
Chicago, Illinois.

You Are Hereby Notified that the undersigned will appear before the Honorable John P. Barnes, in the courtroom usually occupied by him in the Federal Courthouse, in Chicago, Illinois, at the hour of 10:00 A.M. on Tuesday, December 19, 1944, and then and there move for a modification of the order entered herein on December 15, 1944, a copy of which said Motion is attached hereto for your convenience.

Harold R. Schradzke,
Attorney for Stuart Solomon
Brown, Defendant.
33 N. La Salle St.
Chicago 2, Ill.

Received a copy of the above and foregoing Notice, together with a copy of Motion therein referred to, this 18th day of December, 1944.

J. Albert Wolf, by
United States Attorney
E. Tissler.

Filed
Dec. 19,
1944

144 On the 19th day of December, 1944, the defendant, Stuart Solomon Brown, filed a motion to modify the order entered on December 15, 1944, denying the defendants' amended motion for a new trial, which said motion was in words and figures as follows, to-wit:

**145 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32,168)**

**MOTION TO MODIFY ORDER OF DECEMBER 15,
1944, DENYING DEFENDANTS' AMENDED MO-
TION FOR NEW TRIAL.**

Now comes Stuart Solomon Brown, one of the defendants in the above entitled cause, by his undersigned attorney, and respectfully moves the Court to modify the order entered herein on; to-wit, December 15, 1944, denying the defendants' amended motion for a new trial, and in support of this motion to modify the said order, it is shown to the Court:

1. That the Court's order was predicated upon an opinion of the Court entitled "Memorandum" filed herein on December 15, 1944, wherein is set forth an alleged express admission of former counsel for William R. Johnson touching and concerning the ownership of the premises known as Albany Park Bank Building; that the Court deemed that admission to make consideration of motions for new trial absurd and fantastic.

This defendant respectfully shows to the Court that the attorney alleged to have made that statement on behalf of William R. Johnson did not then and does not now represent this defendant, and that anything said attorney might have admitted by inadvertence, by unfamiliarity with the facts of his case, or under any other circumstance,

could not and would not be binding in law or in good conscience upon this defendant, who was at all times represented by other counsel; that said other counsel did not join in and adopt the statement attributed by this Court to the attorney for William R. Johnson.

But this defendant further says that the statement attributed to the attorney for William R. Johnson was not relied upon either by the defendant, William R. Johnson nor by his attorney, nor by the Government and its attorneys, as an admission of any fact respecting the ownership or interest in Albany Park Bank Building, but that on the contrary the Government proceeded to establish by its witness, William Goldstein, alleged facts respecting the acquisition of said property for and on behalf of the said William R. Johnson, and the defendant, William R. Johnson, denied *seriatim* the said testimony of the said William Goldstein in that behalf.

2. Insofar as this defendant is concerned, the ownership of the Albany Park Bank Building was at all times the most significant evidence employed by the Government to establish its case against this defendant, Stuart Solomon Brown: It was the contention of the Government that the said William R. Johnson acquired Albany Park Bank Building to be the financial heart of an alleged gambling empire, and that he installed therein the said defendant Brown to act as a banker for that empire; furthermore, the Government used the witness Goldstein for 147 the testimony that Brown, while a tenant in the Albany

Park Bank Building, went to Goldstein who had leased him the space, for assistance in making a new bank connection; whereupon the Government has consistently argued that Brown's complicity in the scheme to aid Johnson stems from Johnson's ownership of Albany Park Bank Building, in which the said Brown ran a currency exchange. Thus the Government argues that Johnson bought the building for the purpose of setting up a currency exchange, and that Brown, by running the currency exchange in the particular building, aided and abetted Johnson in the alleged scheme to defraud the revenue.

That Goldstein perjured himself in his testimony respecting Albany Park Bank Building has been made manifest herein, but it is respectfully urged to the Court that irrespective of whether Goldstein did or did not perjure himself in respect to the transactions involving Al-

bany Park Bank Building at the original trial herein or by means of his supporting affidavits in opposition to defendants' motion for a new trial and amended motion for a new trial herein, yet, nevertheless, this defendant, Stuart Solomon Brown, is entitled to a new trial since the newly discovered evidence now before this Court establishes that William R. Johnson did not have an interest in Albany Park Bank Building during the period of time Stuart Solomon Brown was a tenant in those premises, namely in 1938 and 1939.

Wherefore, the defendant, Stuart Solomon Brown, moves the Court to modify the order of December 15, 1944, denying all of the defendants the amended motion for a new trial, by excepting this defendant from the provisions thereof and by granting to this defendant a new trial!

Stuart Solomon Brown,

Defendant.

By Harold R. Schradzke (Sgd.)
His Attorney.

148. Thereupon on the 19th day of December, 1944, the cause came on to be heard on the said defendant's motion to modify the order entered on December 15, 1944, denying the defendants' amended motion for a new trial, and the following proceedings were had:

149. IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No.)

Proceedings had in the above entitled cause before the Hon. John P. Barnes, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, commencing on Tuesday, the 19th day of December, A. D., 1944, at 10:00 o'clock a. m.
Present:

Mr. J. Abert Woll, United States Attorney,

By: Mr. Richard G. Finn, Assistant United States Attorney, appeared for Plaintiff;

Mr. Harold R. Schradzke, appeared for Defendant.

150. Mr. Schradzke: Counsel for the Government is not present, your Honor.

The Court: Did you serve notice?

Mr. Schradzke: Yes, sir; I did.

The Court: Proceed.

Mr. Schradzke: My motion is on behalf of Stewart Solomon Brown, one of the co-defendants, your Honor, and it is to modify your Honor's order of December 15, entered herein.

The Court: What did the order say?

Mr. Schradzke: The order of December 15th denied the defendant's motion for new trial.

The Court: What is the particular part?

Mr. Schradzke: In respect to the defendant, Stewart Solomon Brown, I am asking that your order be modified so that it not pertain to Stewart Solomon Brown, but that instead that he be granted a new trial.

The Court: Have you a copy of the order?

Mr. Schradzke: Yes, your Honor.

The Court: What is wrong with the order? What part of the order do you complain of, other than the last part?

Mr. Schradzke: Your Honor now has a copy of it.

The Court: Yes.

Mr. Schradzke: Well, your Honor, in the memorandum opinion filed with this order, and upon which the order was in large part predicated it referred to the opening statement of former counsel for William R. Johnson, at the original trial, and referred to an admission said to have been made by that former counsel, Judge Thompson, in respect to the Albany Park Bank Building, in which your Honor pointed out that Thompson, referring to that property, said, and your Honor quotes the record your Honor had on it, the transcript of the record: "Mr. Johnson owned either the building, or an interest in the building, etc."

The Court: Is that the reason you want this motion modified?

Mr. Schradzke: That is only part of it, your Honor.

The Court: What is the other part?

Mr. Schradzke: What I am calling your Honor's attention to is the fact that at that time this defendant was represented by other counsel.

The Court: Oh, I know that.

Mr. Schradzke: And the remark would not be binding on him.

The Court: The remark was made in front of the jury, and it is on matters of that kind that juries decide cases.

152 Mr. Schradzke: That is the unfortunate part, your Honor, because that remark of counsel could not bind this defendant.

The Court: Your client then was represented by exceedingly competent counsel.

Mr. Schradzke: Yes, sir. Following that statement—

The Court: What other point?

Mr. Schradzke: May I pursue that?

The Court: No, no; I am not going to pursue that.

Mr. Schradzke: I wanted to point out that the parties did go ahead and make proof on that point. Therefore, under the authorities, I take it that the alleged admission would not be an admission binding upon anyone.

The Court: Any other point? I tell you I'm tired of this case!

Mr. Schradzke: Yes, your Honor.

The Court: What is it?

Mr. Schradzke: Insofar as the defendant, Stewart Solomon Brown, is concerned, the case of the Government against him at the trial developed in a very large measure on the Government's contention that William R. Johnson had purchased the property known as the Albany Park Bank Building.

153 The Court: I don't think there is any doubt about it.

He owned it. I have never had any doubt about it. You must bear in mind that your client at the trial of this case, did not put forth facts; they concealed everything they could. They only admitted what they thought they had to admit.

What else? I mean, in the trial of this case, what else have you?

Mr. Schradzke: The point, your Honor, that I wanted to point out was that irrespective of—

The Court: You say that they went on and put in proof. What else have?

Mr. Schradzke: That the showing recently made by the—

The Court: Your showing recently made was absurd.

Mr. Schradzke: I wanted to develop that before your Honor to show that—

The Court: Any other point?

Mr. Schradzke: Yes, I wanted to make the point that irrespective of the perjury of Goldstein, it once having been shown that the Albany Park Building had not been purchased by Johnson, that it was not owned by him—

154 The Court: You haven't shown that. The evidence is overwhelming that it was. He said he did. His counsel said he did.

Mr. Schradzke: That would not be binding upon this co-defendant.

The Court: That point was passed on.

Mr. Schradzke: Those are the points.

The Court: Motion denied.

Mr. Schradzke: May we take an exception to that?

The Court: Yes. What is that?

Mr. Schradzke: That is the motion.

The Court: Let me see it. All right; let it be filed.

(Which were all the proceedings had in the above entitled cause on the above-mentioned date.)

155 State of Illinois } ss.
County of Cook }

James K. Perkins, being first duly sworn, on oath deposes and says that he is and has been for many years last past a shorthand reporter practicing his profession in the City of Chicago, Illinois; that he reported the above and foregoing proceedings before Judge John P. Barnes on the 19th day of December, A. D. 1944, in the case of *United States of America v. Johnson, et al.*, and that the same is a true and correct transcript of what transpired at said time and place.

James K. Perkins.

Subscribed and sworn to before me this 3d day of January, A. D. 1945.

Thomas Lewis,
Notary Public.

157 Thereupon on the 19th day of December, 1944, the Court entered an order denying the said motion of defendant, Stuart Solomon Brown, to modify the order entered on December 15, 1944, denying the defendants' amended motion for a new trial, to the entry of which said order an exception was duly taken.

158 Thereupon on the 21st day of December, 1944, there was filed a notice of appeal of the defendant, William R.

Entered
Dec. 19,
1944

Johnson, which said notice of appeal was in words and figures as follows, to-wit:

Filed
Dec. 21,
1944

159 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

United States of America

v.
William R. Johnson, Jack Sommers,
James A. Hartigan, William P.
Kelly and Stuart Solomon Brown

No. 32,168

NOTICE OF APPEAL.

The appellant, William R. Johnson, lives at Sunnyacres Stock Farm, Lombard, DuPage County, Illinois.

The appellant's attorneys are William J. Dempsey, Bowen Building, Washington, D. C. and Homer Cummings, 1616 K Street, Northwest, Washington, D. C.

The offense charged is evasion of payment of income taxes for the years 1936, 1937, 1938 and 1939, and participation in a conspiracy to effectuate such evasion.

Judgment of conviction on all of the above counts was entered October 23, 1940, and the appellant, William R. Johnson, was sentenced to five years imprisonment on the first, second, third and fourth counts, and two years imprisonment on the fifth count, such sentences to run concurrently, and to pay a fine of \$10,000.00 on each of the five counts, a single payment of \$10,000.00 to discharge all fines.

The appellant is now on bail.

The appellant, after remand of the case pursuant to Rule 2(3) of the Criminal Appeals Rules, filed and presented to the District Court his motion for a new trial, based on newly discovered evidence, which motion for new trial was denied on December 31, 1943. The appeal of this appellant on the original judgment of conviction is pending.

160 On appeal from the order of this Court denying the motion for a new trial, the Circuit Court of Appeals for the Seventh Circuit on May 6, 1944, entered its judgment affirming the denial of defendant's motion. On November

16, 1944, the Circuit Court of Appeals for the Seventh Circuit by order vacated its judgment affirming the order of the District Court denying defendant's motion for new trial, remanded the cause with directions to consider and dispose of defendant's motion when and if filed, and authorized and instructed the District Court to pass upon defendant's Amended Motion for a New Trial and certify its ruling to the Circuit Court of Appeals for the Seventh Circuit. A copy of the order of the Circuit Court of Appeals for the Seventh Circuit was filed in the office of the Clerk of the District Court on November 28, 1944. On December 15, 1944, this Court entered its order and judgment denying defendant's Amended Motion for a New Trial.

I, William R. Johnson, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment of the District Court denying the Amended Motion for a New Trial.

(Sgd) William R. Johnson, Appellant

Dated this 21st day
of December, 1944.

Grounds of Appeal:

1. The order denying new trial is an abuse of discretion on the part of the trial court.
- 161 2. The order of denial is based upon inapplicable principles of law.
3. The decision of the trial court fails to follow controlling principles of law under decisions of the United States Circuit Courts of Appeals for the Seventh Circuit and for other circuits.
4. The order of denial, predicated upon the memorandum opinions of the trial judge, is in conflict with the controlling law of this case as determined by the order of the United States Circuit Court of Appeals for the Seventh Circuit remanding the cause pursuant to Rule 2(3) of the Criminal Appeals Rules.
5. The order of denial as indicated in the memorandum opinions of the trial judge was predicated upon a re-examination of matters decided by the United States Circuit Court of Appeals for the Seventh Circuit in entering its first and second orders of remand, and upon conclusions

reached as a result of such re-examination which conclusions in effect hold the orders of remand to be erroneous as a matter of law.

6. The decision of the trial court is erroneous as a matter of law.

7. The decision of the trial court errs as to matters of fact.

8. The decision of the trial court, as appears from its memorandum opinions, is founded upon and controlled by propositions of law in conflict with the law of this case.

9. The order of denial is, as the memorandum opinions disclose, founded upon a basic misconception of the provincee of the trial court and the extent of the discretion of that court under the orders of remand.

162 10. The memorandum opinions disclose that the trial court failed to exercise the judicial discretion invoked by the Amended Motion for a New Trial and did not give to the decision of the case the consideration to which defendant was entitled under law.

Filed
Dec. 21,
1944

163 On the 21st day of December, 1944, there was filed a notice of appeal of the defendants, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, which said notice of appeal was in words and figures as follows, to-wit:

164 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

United States of America

vs.

William R. Johnson, Jack Sommers,
James A. Hartigan; William P. Kelly
and Stuart Solomon Brown.

} No. 32,168

NOTICE OF APPEAL.

The appellant, Jack Sommers, lives at 1205 West Sherwin Avenue, Chicago, Illinois.

The appellant, James A. Hartigan, lives at 2825 South Maple Avenue, Berwyn, Illinois.

The appellant, William P. Kelly, lives at 130 West Washington Blvd., Oak Park, Illinois.

The appellant, Stuart Solomon Brown, lives at 4901 North Christiana Avenue, Chicago, Illinois.

The appellants' attorneys are Harold R. Schradzke, 33 North LaSalle Street, Chicago, Illinois, and Homer Cummings, 1616 K. Street, N.W., Washington, D. C.

The offense charged is aiding and abetting one William R. Johnson to wilfully attempt to evade payment of income taxes for the years 1936, 1937, 1938 and 1939, except in the instance of Stuart Solomon Brown, who was charged only as to the years 1938 and 1939, and participation in conspiracy to effectuate such evasion was charged as to all appellants.

Judgment of conviction on all of the above counts was entered October 23, 1940, and the appellant, Jack Sommers was sentenced to four years imprisonment on each of the first, second, third and fourth counts, and two years imprisonment on the fifth count, such sentences to run concurrently, and to pay a fine of \$8,000.00 on each of the five counts, a single payment of \$8,000.00 to discharge all fines; and the appellant, James A. Hartigan, was sentenced to three years imprisonment on each of the first, second, third and fourth counts, and two years imprisonment on the fifth count, such sentences to run concurrently, and to pay a fine of \$6,000.00 on each of the five counts, a single payment of \$6,000.00 to discharge all fines; and the appellant, William P. Kelly, was sentenced to four years imprisonment on each of the first, second, third and fourth counts, and two years imprisonment on the fifth count, such sentences to run concurrently, and to pay a fine of \$8,000.00 on each of the five counts, a single payment of \$8,000.00 to discharge all fines; and the appellant, Stuart Solomon Brown, was sentenced to two years imprisonment on each of the third, fourth and fifth counts, such sentence to run concurrently, and to pay a fine of \$4,000.00 on each of the third, fourth and fifth counts, a single payment of \$4,000.00 to discharge all fines.

The appellants are now on bail.

The appellants filed their motion for a new trial based on newly discovered evidence and presented to the District Court after remand of the case pursuant to Rule 2(3) of the Criminal Appeals Rules, which motion for such new

trial was denied on December 31, 1943. The appeal of these appellants on the original judgment of conviction is pending.

166 Thereafter appellants perfected their appeal to the Circuit Court of Appeals for the Seventh Circuit from the order of this Court denying the motion for a new trial, and the Circuit Court of Appeals for the Seventh Circuit affirmed the District Court's denial of defendants' motion. Defendants filed a Petition for Certiorari in the Supreme Court of the United States requesting review of the judgment of the Circuit Court of Appeals; during the pendency of that petition the Solicitor General in a memorandum to the Supreme Court advised the Supreme Court that William Goldstein had procured and had filed certain income tax returns on behalf of his son, Theodore Goldstein, disclosing complete legal and equitable ownership in Theodore Goldstein of a certain property known as Albany Park Bank Building, from the year 1937 thence forward. Upon such disclosure defendants' request that copies of the said returns be filed in the proceedings in the Supreme Court was denied; defendants thereupon moved the Supreme Court that action on the Petition for Certiorari be deferred until appropriate action could be taken in the Circuit Court of Appeals for the Seventh Circuit, namely, the filing of a petition to set aside the last above referred to judgment of the Circuit Court of Appeals and the vacation of the order of this Court denying the motion for a new trial and other procedure, to the end that the motion for a new trial heretofore filed be amended to include the above referred to returns and such other matter as was proper under the circumstances; this motion was granted by the Circuit Court of Appeals on November 16, 1944,

and a copy of that order was filed in the office of the 167 Clerk of the District Court on November 28, 1944. On December 4, 1944, defendants filed their Amended Motion for a New Trial with the Clerk of this Court, pursuant to order and direction of the District Court theretofore entered; answer was filed by the Government on December 7, 1944, and reply thereto by the defendants on December 11, 1944, on which last mentioned date the Court heard argument in open Court deferring his ruling on the motion until December 15, 1944. On December 15, 1944, the District Court denied defendants' Amended Motion for a New Trial. On, to-wit, December 19, 1944, the defendant,

Stuart Solomon Brown, moved the Court to modify the order of December 15, 1944, denying the Amended Motion for a New Trial, and filed his written motion to that end, which said written motion was on last mentioned date denied in open Court, to which denial an exception was taken.

We, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, the above named appellants, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment of the District Court in denying the Amended Motion for a New Trial.

(Sgd) Jack Sommers

(Sgd) James A. Hartigan.

(Sgd) William P. Kelly

(Sgd) Stuart Solomon Brown

Dated this 21st day of December, 1944.

168

GROUNDS OF APPEAL:

Appellants appeal from the order of the District Court of December 15, 1944, denying their Amended Motion for a New Trial, on the ground that the order denying the new trial was an abuse of discretion on the part of the Trial Court. The Trial Court's rejection of the evidence in support of defendants' motion was based upon erroneous application of inapplicable principles of law; the conclusions that defendants' evidence was not newly discovered and that defendants were not diligent were erroneous as a matter of law; the conclusion that all but a few items of defendants' evidence were merely cumulative and that the remaining items were merely impeaching was erroneous as a matter of law; the rejection of each of the affidavits rejected was erroneous as a matter of law and predicated upon a misconception, both of the law and of the facts; that the Court set up criteria as a predicate for denying the motion, which criteria are not and were not the law governing the case; that the order of denial by its terms in effect overrules the prior holdings and orders of the United States Circuit Court of Appeals heretofore entered in this cause with respect to proceedings under Rule 2(3) of the Criminal Appeals Rules, both as relating to the original motion for a new trial and the Amended

Motion for a New Trial; that said order of denial is predicated upon a memorandum of opinion of the Trial Court, the conclusions and statements of law of which memorandum are erroneous as a matter of law; that the District Judge in denying the Amended Motion for a New Trial accepted hearsay and rumor as a predicate for rejecting the legal and factual effect of the income tax returns of Theodore Goldstein; that the memorandum of law filed by the Court, as a basis for the order denying the Amended Motion for a New Trial on its face discloses a misconception of the province and power of the Court in the exercise of the District Court's discretion and in the matter of rejecting the legal significance of the orders of the Circuit Court of Appeals herein.

Entered
Dec. 22,
1944

170 Thereupon on the 22nd day of December, 1944, this Court entered the following order, which order was in words and figures as follows, to-wit:

171 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois.
Eastern Division
(Caption—No. 32168)

Notice of appeal having been filed, It Is Ordered, that the Honorable J. Albert Woll, United States District Attorney, and Homer Cummings, Esq., William J. Dempsey, Esq., and Harold R. Schradzke, Attorneys for William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, appear before the judge of this court on Wednesday, December 27, 1944, at the hour of Ten o'clock A. M. in Room 653 United States Court House, Chicago, Illinois, in order that the judge may, at such time and place, give such directions as may be appropriate with respect to the preparation of the record on appeal, including directions for the purpose of making promptly available all necessary transcripts of testimony and proceedings:

It Is Further Ordered that the Clerk of this Court forthwith transmit copies of this order, by United States Mail, to said Honorable J. Albert Woll, United States District Attorney, and to Homer Cummings, Esq., William J.

Dempsey, Esq., and Harold R. Schradzke, Esq., attorneys for said William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown.

John P. Barnes,
Judge

Dated: December 22, 1944.

172 Thereupon on the 27th day of December, 1944, this Court entered the following order, in words and figures, to-wit:

Entered
Dec. 27
1944

173 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
• • (Caption—No. 32168) • •

ORDER.

Notice of appeal having heretofore been filed by William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, and the Clerk of this Court having notified the trial judge of the filing of said notice of appeal, and the trial judge having directed the attorney for the appellants and the United States Attorney to appear before him on Wednesday, December 27, 1944 at the hour of 10 o'clock A.M. in Room 653 United States Court House, Chicago, Illinois, and it having been represented to the judge, upon behalf of the appellants, that the appeal is to be prosecuted not only upon the clerk's record of proceedings but also upon a bill of exceptions.

It Is Ordered: (1) That the appellants, within thirty (30) days after the taking of the appeal (filing with the clerk of this court a notice of appeal), procure to be settled and filed with the Clerk of this Court a bill of exceptions, setting forth the proceedings upon which the appellants, wish to rely in addition to those shown by the clerk's record of proceedings: (2) that the appellants, within the same time, file with the clerk of this court an assignment of errors of which appellants complain.

John P. Barnes

Judge

Dated: December 27, 1944.

Filed
Jan. 13,
1945

174 Thereupon on the 13th day of January, 1945, the defendants filed a praecipe for record, which said praecipe for record was in words and figures as follows, to-wit:

175 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32168)

PRAECLYPE FOR RECORD.

To the Clerk of the District Court:

You are hereby requested to prepare a transcript of the record in the above entitled cause for the joint and several use of the defendants; William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to Notices of Appeal from the denial of the defendants' Amended Motion for a New Trial heretofore filed on behalf of said defendants, and to include in such transcript of record the following documents, filed and orders entered in the said cause:

1. Petition of Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, filed on March 27, 1944, that they be permitted to take an appeal.
2. Petition of William R. Johnson filed on March 27, 1944, that he be permitted to take an appeal.
- 176 3. Order entered March 29, 1944, allowing said appeal by Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown.
4. Order entered March 29, 1944, allowing said appeal by William R. Johnson.
5. Certified copy of Order of United States Circuit Court of Appeals entered on November 16, 1944, remanding the cause to the District Court with directions to consider and dispose of the defendants' Amended Motion for a New Trial, which said certified copy of said Order was filed with the Clerk of this Court on November 28, 1944.
6. Order entered on November 28, 1944, that defendants file their motion on or before December 4, 1944,

and that the United States file its answer on or before December 7, 1944, and that the defendants file their reply on or before December 11, 1944, and setting the hearing on the said motion for December 11, 1944.

7. Notice and Motion of defendants for production of documents filed on November 30, 1944.
8. Order entered on November 30, 1944, for production of documents and the filing of certified copies thereof in the Clerk's office.
9. Notice and Amended Motion for a New Trial and exhibits attached to and forming part of said Amended Motion for a New Trial, filed on December 4, 1944.
10. Notice and Government's Answer to Defendants' Amended Motion for a New Trial, filed on December 7, 1944.
11. Notice and Defendants' Reply to Government's Answer to the Amended Motion for a New Trial, filed on December 11, 1944, and affidavit of the defendant, William R. Johnson, attached thereto.
12. Transcript of record and two volumes of Bill of Exceptions from United States Circuit Court of Appeals, filed on December 11, 1944.
13. Order entered December 15, 1944, denying and overruling defendants' Amended Motion for a New Trial.
14. Memorandum of Court filed on December 15, 1944.
15. Notice and Motion of defendant, Stuart Solomon Brown, to modify order of December 15, 1944, filed on December 19, 1944.
16. Order entered on December 19, 1944, denying Motion of defendant, Stuart Solomon Brown, to modify order of December 15, 1944.
17. Notice of Appeal of William R. Johnson filed on December 21, 1944.
18. Notice of Appeal of Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, filed on December 21, 1944.
19. Order entered on December 22, 1944, directing that the parties appear on December 27, 1944, for directions with regard to the preparation of the record on appeal.
20. Order entered on December 27, 1944, that the defendants, within thirty days from the filing of their Notices of Appeal, procure to be settled and filed with

- the Clerk of this Court, a Bill of Exceptions, and to file an Assignment of Errors within the same time.
21. Praeclipe for Record and proof of service thereof.
 22. Assignment of Errors.
 23. Notice and Motion to Settle Bill of Exceptions.
 24. Bill of Exceptions.
 25. Order signing, authenticating and certifying Bill of Exceptions.
 26. Complete statement of docket entries from October 16, 1943.

Dated January 13, 1945.

(sgd) *Homer Cummings*

Homer Cummings,

Attorney for William R. Johnson,

Jack Sommers, James A. Hartigan, William P. Kelly and Stuart

Solomon Brown, Defendants.

(sgd) *William J. Dempsey*

William J. Dempsey,

Attorney for William R. Johnson,

Defendant.

178

(sgd) *Harold R. Schradzke*

Harold R. Schradzke,

Attorney for Jack Sommers, James

A. Hartigan, William P. Kelly

and Stuart Solomon Brown, Defendants.

Filed
Jan. 17,
1945

179 Thereupon on the 17th day of January, 1945, the defendants filed Assignment of Errors, which Assignment of Errors was in words and figures as follows, to-wit:

180 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois

Eastern Division

(Caption—No. 32168)

ASSIGNMENT OF ERRORS.

Now come the defendants, William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, by their undersigned attorneys, and hav-

ing appealed from the order and judgment of the United States District Court for the Northern District of Illinois, Honorable John P. Barnes presiding, denying defendants' amended motion for a new trial to the United States Circuit Court of Appeals for the Seventh Circuit, say that in the proceedings herein and in the orders and judgments herein there are manifest errors, and each of such defendants severally makes the following assignments of error, which he alleges were committed in the proceedings on the defendants' amended motion for a new trial:

1. The Court erred in applying to this case and to his determination thereof and order therein, an inapplicable rule of law as the basis for his legal conclusions and as a guide thereto, and thus further erred in denying and rejecting the law as laid down by the Circuit Court of Appeals of this and other circuits and by the Supreme Court of the United States.

181 2. The Court erred in overruling and denying defendants' amended motion for a new trial.

3. The Court erred in finding and concluding that none of the items of newly discovered evidence submitted by the defendants in support of their amended motion for a new trial, including the newly discovered evidence submitted by the defendants in support of their original motion for a new trial filed on October 29, 1943 (hereinafter referred to as "original motion for a new trial"), constituted newly discovered evidence warranting a new trial.

4. The Court erred in finding and concluding that all but a few items of the evidence submitted by the defendants in support of their amended motion for a new trial, including the evidence submitted by the defendants in support of their original motion for a new trial, were merely cumulative of other like items presented at the trial.

5. The Court erred in finding and concluding that there had been delay in presenting any of the items improperly designated by it as "merely cumulative".

6. The Court erred in finding and concluding that defendants had not been diligent as to those items improperly designated by it as "merely cumulative".

7. The Court erred in finding and concluding that no adequate reason had been presented for not having sooner presented any or all of those items improperly designated by it as "merely cumulative".

182 8. The Court erred in its view of the purpose and effect of the affidavits and other evidence which it im-

properly designated as "merely cumulative", and in refusing on the ground that the matters covered by the affidavits and other evidence were not material, to consider the facts therein as bearing on the amended motion for a new trial.

9. The Court erred in finding and concluding that all of the items submitted in support of the defendants' amended motion for a new trial, including all of the items submitted in support of the defendants' original motion for a new trial, other than those improperly designated by it as "merely cumulative" were merely impeaching.

10. The Court erred in finding and concluding that the defendants had not been diligent as to those items improperly designated by it as "merely impeaching".

11. The Court erred in finding and concluding that no adequate reason had been presented for not having sooner presented any or all of those items improperly designated by it as "merely impeaching".

12. The Court erred in concluding that the defendants were not taken by surprise by Goldstein's false testimony.

13. The Court erred in concluding that the defendants could have produced at the trial the evidence offered in support of the amended motion for a new trial, including the evidence offered in support of the original motion for a new trial but chose not to do so.

14. The Court erred in finding and concluding that the defendants had not presented adequate reason for not having sooner submitted the affidavit testimony of the defendant Johnson; John Elmer Johnson, Hess and Fowler.

183 15. The Court erred in finding and concluding that the affidavit testimony of Green in support of the defendants' amended motion for a new trial and in support of the defendants' original motion for a new trial is inherently improbable.

16. The Court erred in finding and concluding that the affidavit testimony of Green because of its source was not worthy of belief.

17. The Court erred in finding and concluding that the affidavit testimony of the defendant Johnson, John Elmer Johnson, Hess and Fowler because of its source was not worthy of belief.

18. The Court erred in finding and concluding that Goldstein, a principal and material Government witness, has not recanted his testimony that Johnson gave him the money to purchase for Johnson the properties known as

Bon Air, the White House, the Green House, the Gas Station, the Dells, the Curran Farm, 9730 Western Avenue and the Albany Park Bank Building, and to place in escrow toward the purchase of the Columbian Garden property the sums of \$7,500 and \$10,000.

19. The Court erred in finding and concluding that Goldstein did not testify falsely on the trial in testifying that Johnson had given him the money to purchase the properties known as the Bon Air, the White House, the Green House, the Gas Station, the Dells, the Curran Farm, 9730 Western Avenue and the Albany Park Bank Building, and to place in escrow toward the purchase of the Columbian Garden property the sums of \$7,500 and \$10,000, and that he purchased said properties and made said deposits for defendant Johnson.

20. The Court erred in finding and concluding that Goldstein's testimony concerning the source of the currency used by him in the purchase and proposed purchase of 184 the properties known as the Bon Air, the White House, the Green House, the Gas Station, the Dells, the Curran Farm, 9730 Western Avenue, Columbian Gardens, and the Albany Park Bank Building, is corroborated by any facts or circumstances in evidence at the trial.

21. The Court erred in finding and concluding that Goldstein's testimony is corroborated by any facts or circumstances in evidence at the trial with respect to the use or keeping of currency on hand by defendant Johnson.

22. The Court erred in finding and concluding that any acts or things done by Goldstein in connection with the purchase of the Sunny Acres Farm by Johnson in any way corroborates Goldstein's testimony.

23. The Court erred in finding and concluding that deliberately false statements in Goldstein's affidavits denying Green's testimony in any way detracted from such testimony or made it less worthy of belief.

24. The Court erred in finding and concluding that Goldstein on the trial (with the exception of the source of the currency that he deposited in the various escrows) told only what the various escrow papers and records compelled him to tell.

25. The Court erred in disregarding applicable decisions of this Court and of the Supreme Court of the United States and of various Circuit Courts of Appeals and applying in his denial of the amended motion for a new trial precedent and rules of law having no application to the legal questions presented by the motion.

26. The Court erred in not giving appropriate consideration to the evidence presented in support of the amended motion for a new trial, including the evidence presented in support of the original motion for a new trial.

185 27. The Court erred in misconceiving and mistaking in his memorandum opinion filed herein on December 15, 1944 and in his memorandum opinion filed on December 28, 1943, the defendants' contentions and position on their amended motion for a new trial.

28. The Court erred in denying defendants' amended motion for a new trial on the basis of the erroneous and inapplicable principles of law adopted in his memorandum opinion filed on December 15, 1944, and in his memorandum opinion filed on December 28, 1943.

29. The Court erred in not correctly applying so much of the principles of law adverted to in his memorandum filed on December 15, 1944, and in his memorandum filed on December 28, 1943, as have any application to the facts presented on the defendants' amended motion for a new trial.

30. The Court erred in denying the amended motion for a new trial on the basis of a misapprehension as to the purpose and effect of the facts and evidence at the trial of this case as is exhibited in his memorandum filed on December 15, 1944, and as is exhibited in his memorandum filed on December 28, 1943.

31. The Court erred in denying the amended motion for a new trial on a plain misapprehension and mistake as to the purpose and effect of the facts presented on the amended motion for a new trial as is exhibited by his memorandum filed on December 15, 1944, and by his memorandum filed on December 28, 1943.

32. The Court erred by misconceiving and mistaking the facts demonstrated by the evidence at the trial and on the amended motion for a new trial and on the original motion for a new trial.

186 33. The Court erred in denying the amended motion for a new trial for reasons and on grounds beyond his jurisdiction and discretion under the order entered by the Circuit Court of Appeals on October 15, 1943, remanding the case.

34. The Court erred in denying the amended motion for a new trial for reasons and on grounds beyond his jurisdiction and discretion under the order entered by the Circuit Court of Appeals on November 16, 1944, remanding the case.

35. The Court erred in denying the amended motion for a new trial in that the said denial is based not upon the exercise of any discretion by the trial court but upon the application of inapplicable principles of law, and upon the application of erroneous principles of law.

36. The Court erred in denying the amended motion for a new trial in that his denial constitutes a clear abuse of his discretion.

37. The Court erred in basing his denial of the amended motion for a new trial upon the erroneous and inapplicable finding and conclusion that the newly discovered evidence offered by the defendants in support of their amended motion for a new trial, including newly discovered evidence offered by the defendants in support of their original motion for a new trial, is not of such a nature as would probably produce an acquittal on a new trial.

38. The Court erred in denying the defendants' amended motion for a new trial in that it erroneously excluded from its consideration of the motion matters which were appropriate to a decision on the motion.

187 39. The Court erred in holding in effect that the evidence in support of the amended motion for a new trial, including the evidence in support of the original motion for a new trial, was insufficient to reasonably establish that Goldstein testified falsely as to material matters.

40. The Court erred as a matter of law in finding that the evidence supporting the amended motion for a new trial, including the evidence supporting the original motion for a new trial, did not warrant a new trial.

41. The Court erred in not finding that without Goldstein's false testimony the jury might have reached a different conclusion.

42. The Court erred in holding, in effect that the defendants were not prejudiced by Goldstein's false testimony.

43. The Court erred in its failure to hold as a matter of law that the affidavits and exhibits submitted by the defendants in support of their amended motion for a new trial disclosed and demonstrated false testimony of the witness Goldstein to the prejudice of the defendants and each of them in respect to material matters.

44. The Court erred in disregarding the order of remand of the Circuit Court of Appeals entered on October 15, 1943, and its legal consequences.

45. The Court erred in disregarding the order of remand of the Circuit Court of Appeals entered on November 16, 1944, and its legal consequences.

46. The Court erred in basing his denial of the amended motion for a new trial upon his consideration of and conclusion on the question of diligence in the presentation of evidence which the defendants had presented to the United States Circuit Court of Appeals in support of their motion for remand.

188 47.. The Court erred in basing his denial of the amended motion for a new trial upon his reexamination of the question of diligence in the presentation of the evidence submitted in support of the defendants' amended motion for a new trial, which question had been decided by the United States Circuit Court of Appeals in entering its order of remand of October 15, 1943 and in entering its order of remand of November 16, 1944 and upon conclusions reached as a result of such reexamination, which conclusions in effect hold the said orders of remand to be erroneous as a matter of law.

48. The Court erred in basing his denial of the amended motion for a new trial upon his consideration of and conclusion concerning the question of whether evidence submitted by the defendants to the United States Circuit Court of Appeals in support of their motion for remand was "merely cumulative".

49. The Court erred in basing his denial of the amended motion for new trial upon his reexamination of the question of whether the evidence submitted by the defendants in support of their amended motion for new trial was "merely cumulative", which question had been decided by the United States Circuit Court of Appeals in entering its order of remand of October 15, 1943 and in entering its order of remand of November 16, 1944, and upon conclusions reached as a result of such reexamination, which conclusions in effect hold the said orders of remand to be erroneous as a matter of law.

50. The Court erred in basing his denial of the amended motion for a new trial upon his conclusion that the evidence submitted by the defendants to the United States Circuit Court of Appeals in support of their motion for remand was "merely impeaching".

189 51. The Court erred in basing his denial of the amended motion for a new trial upon his reexamination of the question of whether the evidence submitted by the defendants in support of their amended motion for new trial was "merely impeaching", which question had been decided by the United States Circuit Court of Appeals in entering its order of remand of October 15, 1943 and in entering its

order of remand of November 16, 1944 and upon conclusions reached as a result of such reexamination that it was "merely impeaching", which conclusions in effect hold the said orders of remand to be erroneous as a matter of law.

52. The Court erred in holding in his decision that the evidence presented to the United States Circuit Court of Appeals in support of the defendants' motion for remand was not presented in good faith.

53. The Court erred in disregarding and ignoring the precedent set by the Supreme Court herein by its refusal to consider the unverified and unauthenticated stenographic notes on the objection that they were unverified, unauthenticated and inaccurate.

54. The Court erred in not giving defendants' amended motion for a new trial proper and appropriate consideration as is evidenced by patent mistakes and misstatements in his memorandum filed on December 15, 1944, and as evidenced by patent mistakes and misstatements in his memorandum filed on December 28, 1943, as to defendants' position and contentions on the amended motion for a new trial, and as to the purpose, meaning and effect of testimony at the trial and evidence in support of the amended motion for a new trial, and as to facts plainly appearing in the record.

190 55. The Court erred in his consideration and disposition of the amended motion for a new trial in that he acted in a prejudiced, biased and nonjudicial manner as is evidenced by the improper and unfounded statements in his memorandum filed on December 15, 1944, and in his memorandum filed on December 28, 1943, concerning the good faith of defendants, and as evidenced by his arbitrary and unreasonable demand that counsel for defendants undertake and complete the physically impossible task of pointing out in five days' time all of the many errors in the admittedly inaccurate, unverified and unauthenticated stenographic notes of the trial which were not relied upon by either the defendants in support of, nor the Government in opposition to, the amended motion for a new trial.

56. The Court erred in concluding that the filing of the income tax returns of Theodore Goldstein for the years 1937 to 1943, both inclusive, cannot fairly be considered without at the same time considering the alleged circumstances of their filing.

57. The Court erred in concluding that the said alleged circumstances negative any possibility of its being reasonably contended that the filing of the said income tax returns by Theodore Goldstein can be held to be any evidence that

during the years in question he had some interest in the Albany Park Bank Building other than as the holder of the bare legal title.

58. The Court erred in concluding and holding that the said income tax returns are excluded from the classification of newly discovered evidence warranting a new trial.

59. The Court erred in concluding and holding that the said income tax returns are "cumulative only".

191. 60. The Court erred in relying, and basing its conclusions and findings, upon hearsay, rumor and uncorroborated statements contained in the affidavits submitted by the Government in opposition to the amended motion for a new trial.

61. The Court erred in denying the motion of defendant Brown, filed December 19, 1944, to modify the order of December 15, 1944, denying the amended motion for a new trial.

62. The Court erred in failing to hold that the evidence submitted on the amended motion for a new trial, including that submitted on the original motion for a new trial, establishes that defendants were deprived of their right to a fair trial.

And by reason of said errors and other manifest errors appearing in the record herein, the defendants pray that the order overruling and denying defendants' amended motion for a new trial be set aside and a new trial ordered for all of the defendants.

William R. Johnson,

Defendant

By (Signed) *Homer Cummings*

(Signed) William J. Dempsey
His Attorneys

Jack Sommers, James A. Hartigan,
William P. Kelly and Stuart Solomon
Brown,

Defendants

By (Signed) *Homer Cummings*

(Signed) Harold R. Schradzke
Their Attorneys

192 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32,168)

**CERTIFICATE OF COURT AS TO VOLUME IX
OF THE BILL OF EXCEPTIONS.**

The foregoing Volume IX of the Bill of Exceptions herein to which this certificate is appended and attached, correctly, accurately and truthfully shows and contains the proceedings had herein that are set forth and referred to in said Volume IX of said Bill of Exceptions, which said proceedings are as follows:

Memorandum opinion of Court filed on December 15, 1944.

Order entered December 15, 1944, denying and overruling defendants' amended motion for a new trial. Minutes of proceedings had on December 15, 1944, in which Court allowed appeal.

Notice and motion to modify order of December 15, 1944.

Minutes of proceedings had on December 19, 1944, in which Court denied motion to modify.

Notice of appeal of William R. Johnson.

Notice of appeal of Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown.

Order entered on December 22, 1944, that parties appear for directions with regard to the preparation of record on appeal.

193 Order entered on December 27, 1944, prescribing time within which Bill of Exceptions is to be settled and filed, and Assignment of Errors is to be filed.

Praecipe for record.

Assignment of Errors.

and the foregoing said Volume IX of the said Bill of Exceptions is correct and accurate in all respects and is hereby settled, approved, allowed and authenticated as proper in form and as conforming to the truth, and is hereby made a part of the record in this case.

Dated January 19th, 1945.

John P. Barnes,
United States District Judge.

194 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 32,168)

**CERTIFICATE OF COURT AS TO BILL OF
EXCEPTIONS.**

The foregoing Bill of Exceptions in nine volumes, duly proposed by the defendants, William R. Johnson, Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown, and duly presented to the Court within the time allowed by law and by the rules and orders of this Court and of the United States Circuit Court of Appeals for the Seventh Circuit, after due notice to the United States Attorney, contains all of the evidence submitted in support of, and in opposition to, the defendants' amended motion for a new trial, and all motions, objections and rulings, orders, and the memorandum opinions of the Court, which are the basis of the assignment of errors, and the said Bill of Exceptions in nine volumes is hereby settled, approved, allowed, signed and authenticated as in the proper form and as conforming to the truth, and is the true Bill of Exceptions herein, and is hereby made a part of the record in this case.

195 It Is Further Ordered that the said Bill of Exceptions in nine volumes, and the assignment of errors forming part thereof, shall be transmitted by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, together with a certificate certifying the said Bill of Exceptions in nine volumes as part of the record in this case.

Dated January 19th, 1945.

John P. Barnes,
United States District Judge

The complete statement of the docket entries in said cause since October 16, 1943 as requested in Appellants praecipe for record filed January 13, 1945 are as follows:

DATE	FILINGS—PROCEEDINGS
1943	
Oct 16	Filed Certified Order of U. S. Circuit Court of Appeals as to Wm R Johnson and Jack Sommers
Oct 19	Filed Notice and Motion—Wm J. Dempsey and Harold R. Schradzke Attys for defts Sommers, Hartigan, Flanagan, Wm P. Kelly and Stuart Solomon Brown
Oct 19	Order that defts may file motion for a new trial on or before Oct 29, 1943 and that Gov't may reply thereto on or before Nov 9, 1943. (draft) Hrg on motion for new trial and reply set for Nov 15, 1943 Barnes, J.
Oct 18	Filed appearance for Wm R Johnson—William J. Dempsey Atty
Oct 18	Filed appearance of Harold R Schradzke as additional counsel for defts Jack Sommers, James A Hartigan, Wm P. Kelly and Stuart Solomon Brown
Oct 28	Filed Transcript from Circuit Court of Appeals
Oct 29	Filed Motion—Wm J. Dempsey and Harold R. Schradzke Attys
Oct 29	Filed Motion for New Trial Pursuant to Rule 2(3) of the Criminal Appeals Rules & Brief In Support Thereof—Wm J. Dempsey and Harold R. Schradzke Attys for Defts
Oct 29	Filed Appendix to Defendants' Brief In Support of Motion for a New Trial
Nov 9	Filed Answer To The Defendants' Motion For New Trial and Government's Exhibits Nos 23 and 24—U. S. Atty
Nov 9	Filed Brief Of The Government In Opposition To Motion For New Trial—U. S. Atty
Nov 12	Filed Reply Brief Of Defendants On Motion For New Trial—Dempsey and Schradzke Attys for Defts
Nov 12	Filed Defendants' Counter Affidavits Nos. 72 and 73
Nov 15	Argmts hrd and concluded Order transcript of proceedings produced by defts' counsel and transcript of proceedings produced by U. S. Atty impounded with

the Clerk of this Court Order that debtors' counsel point out any inaccuracies in said transcripts within 5 days from this date Rule on parties to file original affidavits with the Clerk of this Court and motion of debtors for new trial taken under advisement on papers filed and affidavits on papers to be filed— Barnes, J.

- Nov 15 Filed affidavits of Jos Shaffron, (2) affidavits of Walter (Buck) Henrichsen, Helen Henrichsen, Jos J. Nadherney, Maurice Green, (2) William Schwefer, (2) Roy Loyé, Jos J. Spérling, John W. Garry, Edward Papin, Jacob Leo Smith, Eli Herman, (2) Samuel Hare, Walter Piper, Alice Kemp, Frederic P. Kirschner, Walter Peters, Edward J. Hess, Deposition of J. Lawrence Holleran, and John W. Guild, Letter of Wm Merrill, Affidavit of Nate Jacobs, Albert Hoffman, (3) Beatrice Marsh, Marian Giles Sommer, (4) John S. Piazza, Albert Tatge, Charles R. Barrett, Herbert "Scotty" Irwin, Lester Weil, Phil Tyrrell, Joe Bauerfeind, Fred L. Huscher, John G. Wagner with record sheet attached of the Sinclair Refining Co.
- Receipt of William Goldstein, Affidavit of Gerald J. Berkley, Stewart Peters, Wm R. Peacock, Pearl Ferguson, Marie Schmidt, John Schmidt, Certified copy of Appointment Of Successor Trustee signed by Wm Goldstein, Affidavit of Leo Blockus, Letter from Logan Square Realty & Currency Exchange signed by Leon J. Levine, Photostatic Copy of Agreement of Hines Realty & Construction Co signed by Theodore Goldstein, Photostatic Copy of Letter and Certificate of Insurance of Nate Jacobs & Company, Affidavits of Frank T. Fowler, Maurice Green, Rt Rev Msgr D. F. Frawley, Harry Bell, Robt P. Sullivan, John E. Johnson, Letter signed by Geo F. Sullivan, U. S. Atty, affidavit of Betty J. Will, Walter Peters, Leon Levine, Clarence Engelbretson, Wm R. Johnson (2) Certified copies of Searches signed by Jay B. Morse County Clerk, Waukegan Ill and L. J. Wilmer Clerk of Circuit Court Waukegan, Ill.
- Nov 17 Filed Answer to Defendant's Motion For Remand and Analysis Of Material Filed By Defendants In Support Of Their Motions To Remand The Above Entitled Cases certified by the C. C. A.

- Nov 17 Filed Additional Affidavits And Supported Documents In Opposition To Defendants' Motions For Remand And In Reply To Defendants' Reply to Government's Answer To Defendants' Motion For Remand and Certified by C. C. A.
- Nov 17 Filed Letter From Rev Lawrence W Frawley marked Ex #32 and Quitclaim deed and lease for Albany Park Bank Bldg filed as exhibit #23
- Dec 28 Filed Memorandum of the Court
- Dec 29 Order praecipes for subpoenas filed by defts, subpoenas issued on behalf of defts and orders directing issuance of subpoenas impounded with the Clerk of this Court Barnes, J
- Dec 31 Order defts mo for a new trial overruled and denied (draft) Barnes, J
- Dec 31 Filed Notice of Appeal—Wm R Johnson by Wm J Dempsey Atty
- Dec 31 Filed Notice of Appeal of Jack Sommers, James A Hartigan, Wm P Kelly, Stuart Solomon Brown Harold R Schradzke Atty
- Dec 31 Copy of Opinion of Judge Barnes mailed to Atty General
- Dec 31 Order that Attys for parties appear Jan 3, 1944 at 10:00 A.M. for directions with respect to preparation of record on appeal (2 drafts) Barnes, J
- 1944
- Jan 3 Order that Bill of Exceptions be procured for settling and filing and that Assignment of Errors be filed within 30 days from taking of appeal (2 drafts) Barnes, J
- Jan 22 Filed Notice and Praesipe For Record—Wm J. Dempsey and Harold R. Schradzke Attys
- Jan 22 Filed Notice and Assignment Of Errors—Wm J. Dempsey and Harold R. Schradzke Attys
- Jan 22 Filed Notice and Motion To Settle Bill of Exceptions—Wm J. Dempsey and Harold R. Schradzke Attys for defts
- Jan 26 Order appendix to defts Brief in support of motion for new trial substituted for certain original exhibits (draft) Barnes, J
- Jan 28 Bill of Exceptions of defts in seven volumes settled, approved, signed and filed—Barnes, J

- Jan 29 Issued Transcript to C. C. A.
- Mar 27 Filed (2) Petitions for Allowance of Appeal Wm J. Dempsey and Harold R. Sehradzke Attys
- Mar 29 Order allowing appeal to Wm R. Johnson (draft)
Order allowing appeal to Jack Sommers, et al (draft)
Barnes, J
- Nov 28 Filed Certified Copy Of Order Of Circuit Court of Appeals entered Nov 16, 1944
- Nov 28 Order on deft to file papers on or before Dec 4 1944
that U. S. file on or before Dec 7, 1944 such answer
as it may deem necessary and advisable that defts file
reply before 10 A.M. Dec 11, 1944 and hrg set for
Dec 11, 1944—10 A.M. That Clerk of Court forth-
with mail copies (draft) Barnes, J
- Nov 30 Filed Notice, and Motion For Production Of Docu-
ments—Homer Cummings, William J. Dempsey and
Harold R. Sehradzke Attys for defts
- Nov 30 Order for producton of documents and the filing
of certified copies thereof in Clerk's Office (draft)
Barnes, J
- Dec 4 Filed Notice and Amended Motion For New Trial
And Exhibits Attached To And Forming Part Of
Amended Motion For A New Trial—Homer Cum-
mings, William J. Dempsey and Harold R. Sehradzke
Attys for defts. (Exhibits in folder attached to
Amended Mo) Ex A-Ex. B, Ex B-1, Ex B-2, Ex C-1,
Ex C-2, Ex C-3, Ex C-4, Ex C-5, Ex C-6, Ex C-7,
Ex D-Ex E-1, Ex-E-2
- Dec 7 Filed Notice, Government's Answer To Defendants'
Amended Motion For New Trial, and Affidavit of
Service—U. S. Atty
- Dec 11 Filed Notice—Homer Cummings, William J. Demp-
sey and Harold R. Sehradzke Attys
- Dec 11 Argmts hrg on defts' amended motion for new trial
and concluded and advisement. Cause contd to Dec
15, 1944—2 P. M. for decision Barnes, J
- Dec 15 Defendants amended motion for new trial overruled
and denied and order that Clerk forthwith file a
certified copy of the orders in the office of the Clerk
of the Circuit Court of Appeals & exec (draft).
Appeal prayed and allowed Barnes, J
- Dec 15 Filed Memorandum of the Court.
- Dec 19 Filed Notice and Motion To Modify Order of

- December 15, 1944 Denying Defendants' Amended Motion For A New Trial—Harold R. Sehradzke Atty for Deft Stuart Solomon Brown
- Dec 19 Argmts hrd and concluded Mo of deft Stuart Solomon Brown for modification of order entd on Dec 15, 1944—denied Barnes, J
- Dec 11 Filed Reply Of Defendants To Government's Answer To Defendants' Amended Motion For New Trial, by Homer Cummings, William J. Dempsey and Harold R. Sehradzke Attys for defts
- Dec 11 Filed Transcript of Record And (2) Volumes of Bill of Exceptions from U.S.C.C.A.
- Dec 21 Filed Notice of Appeal—William R. Johnson by his attorneys William J. Dempsey and Homer Cummings
- Dec 21 Filed Notice of Appeal—Jack Sommers, James A. Hartigan, William P. Kelly and Stuart Solomon Brown by their attys Homer Cummings and Harold R. Sehradzke
- Dec 22 Order directing parties to appear Dec 27, 1944 for directions with regard to preparation of record on appeal (draft) Barnes, J
- Dec 27 Order fixing 30 days for bill of exceptions and assignment of errors (draft) Barnes, J
- 1945 Jan 13 Filed Notice and Praceipe For Record—Homer Cummings, William J. Dempsey and Harold R. Sehradzke Attys for defts
- Jan 12 Filed Certified Copy of Order from U.S.C.C.A.
- Jan 17 Filed Assignments of Error—Attys for Defts
- Jan 19 Filed Notice and Motion—Atlys for defts
- Jan 19 Bill of Exceptions in 9 volumes settled approved and authenticated Barnes, J
- Jan 19 Filed Bill of Exceptions

Northern District of Illinois }
Eastern Division { ss

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made

in accordance with Praeclipe filed in this Court in the cause
entitled

United States of America

vs.

William R. Johnson, et al. D.C. No. 32168

as the same appear from the original records and files
thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand
and affixed the seal of said Court at my office, in the City
of Chicago, in said District, this 19th day of January, A.D.
1945.

Roy H. Johnson
(Seal) Clerk

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the third day of October, in the year of our Lord, one thousand nine hundred and forty-four, and of our Independence, the one hundred and sixtieth-ninth.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM P. KELLY, AND
STUART SOLOMON BROWN, DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And, to-wit: On the second day of May 1945, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

October Term, 1944, April Session, 1945

No. 7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

No. 7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM P. KELLY, AND
STUART SOLOMON BROWN, DEFENDANTS-APPELLANTS

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division

May 2, 1945

Before SPARKS, MAJOR, and MINTON, Circuit Judges

MAJOR, Circuit Judge. On October 23, 1940, the District Court entered judgment against the defendants upon a jury's verdict which had found them guilty of income tax evasions for the years 1936 through 1939. The defendants appealed to this court, which reversed the conviction (United States v. Johnson, 123 F. 2d 111). The Supreme Court granted certiorari and reversed this court. United States v. Johnson, 319 U. S. 503, 63 S. Ct. 1233, 87 L. Ed. 1546).

Before the mandate of the Supreme Court issued, the defendants filed in that court a motion for a stay of mandate until they could take such steps in this court pursuant to Rule 2 (3) of the Criminal Appeals Rules, 18 U. S. C. A., following section 688, as were necessary to have the case remanded to the District Court for the purpose of permitting the defendants to file a motion for a new trial on the ground of newly discovered evidence. Upon a motion of the defendants filed in this court, we remanded the case to the District Court to consider and dispose of any motion filed under Rule 2 (3) of the Criminal Appeals Rules and any motion collateral thereto, and authorized the District Court to assume jurisdiction of the causes for such purposes.

The District Court assumed jurisdiction and permitted the defendants to file their motion for a new trial on the ground of newly discovered evidence, together with supporting affidavits and papers; and the government was given time to respond. The so-called newly discovered evidence was directed to showing that one of the government's chief witnesses, William Goldstein, had testified falsely on the original trial of the defendants. When the various pleadings had been filed, a hearing was had, and the District Court overruled the motion. From that order denying their motion for a new trial on the ground of newly discovered evidence, the defendants appealed to this court, which affirmed the District Court (United States v. Johnson, 142 F. 2d 588). The defendants then petitioned the Supreme Court for certiorari.

While their petition for certiorari was pending in the Supreme Court, the defendants asked that court to consider some additional information which they contended proved conclusively that William Goldstein had testified falsely on the original trial. The Supreme Court refused to consider these new facts, because they were no part of the record, but did agree to withhold consideration of the petition for certiorari until the defendants could apply to this court for leave to reopen the proceedings on the motion for a new trial so as to present this new information.

The defendants applied to this court to reopen the proceedings on their former motion for a new trial. On November 16, 1944, this application was granted. We vacated our former order which had affirmed the District Court's denial of the defendants' original motion for a new trial on the ground of newly discovered evidence and again remanded the case to the District Court, this time with directions to consider and dispose of the defendants' amended motion and to certify its ruling back to this court at an early date.

Upon the filing of the certified copy of our order of November 16, 1944, the District Court on its own motion ordered the defendants to file on or before December 4, 1944, their motion and supporting papers as authorized by our order, and further ordered that the United States should respond thereto on or before December 7, 1944. December 11, 1944, was set as the date for the defendants' reply and for oral arguments on the motion. Motion, response and reply were filed, a hearing was had, and on December 15, 1944, the District Court in a memorandum opinion overruled the amended motion for a new trial on the ground of newly discovered evidence and entered judgment accordingly. The defendants' present appeal is from that judgment.

The original motion alleged that William Goldstein testified falsely at the trial in relation to the ownership of ten items of property, referred to as the "Bon Air," the "Curran Farm," the "Green House," the "White House," the "Gas Station," the "Dells property," "9730 Western Avenue property," the "\$10,000 Escrow," the "\$7,500 Escrow," and the "Albany Park Bank Building." The proof offered in support of the original motion had to do with all of these ten pieces of property, while the additional proof offered in connection with the amended motion had to do only with the "Albany Park Bank Building."

That Goldstein's testimony was material and, if false, was highly prejudicial to the defendants, is not in dispute. The falsity of Goldstein's testimony was the essential issue presented and decided by the court below, both on the original and on the amended motion, and the correctness of those decisions is the only issue presented to this court. As stated in the government's brief filed in this court on the original motion:

"It seems obvious therefore that the finding by the District Court that Golstein did not testify falsely completely and effectively disposed of all purported justification for a new trial, and his order and the appeal therefrom presents to this Court only a question of fact, namely, did Goldstein testify falsely at the trial?"

And again it is stated in the same brief:

"In short, the question presented by the defendants in the court below was: Did Goldstein tell the truth when he testified in the

trial of this case? An examination of the defendants' brief discloses that basically this same question is the sole question presented to this Court. After considering all of the affidavits introduced in support of the defendants' motion for a new trial Judge Barnes found that Goldstein did tell the truth. It is patent that such a finding is a finding of fact."

In discussing the proof bearing upon the issue of falsity, it is important to have in mind the circumstances under which Goldstein testified as a government witness. It appears that the Grand Jury was engaged in an investigation of the income of the defendant Johnson and of one William Skidmore. Goldstein, who was a personal friend as well as the attorney for Skidmore, testified before the Grand Jury. In an effort to protect Skidmore, he gave certain testimony which resulted in his indictment for perjury. He and Skidmore were also indicted as codefendants with Johnson in the instant case. On the day the case was called for trial, the charge against Goldstein and Skidmore was dismissed, and shortly thereafter Goldstein took the witness stand for the government and gave the testimony now alleged to be false. He denied on the witness stand that he had been promised immunity, but stated, "My lawyer has not told me anything about what the deal was." After the perjury indictment was returned, he furnished bond but after the trial in the instant case was released upon his own recognizance. The perjury indictment has not been tried and so far as this record discloses is still pending. Furthermore, it is shown by affidavit that in the summer of 1942 a complaint was filed with the Chicago Bar Association, the designated agent of the Supreme Court of Illinois for the determination of misconduct of attorneys. With reference to this complaint, William J. Dempsey, of counsel for Johnson, in a letter to the Attorney General under date of June 25, 1943, stated:

"The complaint requested that an investigation be made of Goldstein's perjury and that appropriate action be taken. When Mr. Woll (United States District Attorney) learned that such an investigation was to be undertaken, he saw fit to request the Bar Association to defer any investigation of this matter until after the United States Supreme Court had decided the Johnson case. This investigation was deferred again at Mr. Woll's request after the Supreme Court's decision of June 7, 1943."

This statement is not denied either by the United States Attorney or by any official of the Chicago Bar Association.

All of the proof in support of and in opposition to the motion and the amended motion is in the form of affidavits and documents. Much of it, as far as we can ascertain, is immaterial to the issue. In our consideration, we shall attempt to confine our

discussion to that which we think is relevant. We shall first consider the testimony of Goldstein with reference to the "Albany Park Bank Building" for the reason that all of the proof offered in support of the amended motion concerns Goldstein's testimony relative to this property. In our opinion, the government makes an ill advised attempt to escape defendants' contention that Goldstein testified that Johnson was the owner of the properties in question but embraced nothing more than the bare fact that in the purchase of the various properties involved the money for such purchases was received from Johnson. Especially is this true in light of the fact that the cornerstone of the government's case was that Johnson was the owner. Based largely on Goldstein's testimony, the government has succeeded in convincing the jury and court after court that such was the case.

Concerning the Albany Park Bank Building, Goldstein testified:

"I was requested by Mr. Johnson to go out there and purchase the (Albany Park Bank) building for him. * * * I purchased that property at the request of Mr. Johnson. * * * Title to that property was taken in the name of Ted W. Goldstein, my son. Subsequently there was a quit claim deed delivered to Mr. William R. Johnson by my son. This Albany Park Building property was purchased July 16, 1937."

The court below accurately paraphrased this testimony as follows:

"Goldstein testified on the trial that he purchased this property for Johnson and paid for it with currency given him by Johnson; that he took title in the name of his son, Ted Goldstein, and subsequently caused a quit claim deed to be delivered to Johnson."

It is difficult to discern how Goldstein could have any more definitely placed the ownership of this property in Johnson. That the government squarely relied upon this testimony as proving ownership in Johnson is shown in its brief on reargument before the Supreme Court, wherein it cites Goldstein's testimony alone for the following statement: "Johnson was shown to be the owner of the building" (referring to the Albany Park Bank Building).

At least two of the affidavits refer to Goldstein's perjury generally, as distinguished from that with reference to any particular property, and we shall first consider these affidavits and briefly state the reasons they were cast aside by the trial court. Maurice Green, who for many years had been a personal friend of Goldstein, makes two affidavits. In the first he states that he was told by Goldstein, "his testimony regarding purchases of properties for said William R. Johnson was false." Goldstein told the affiant "that he had to so testify to help himself because of charges of contempt, conspiracy and perjury pending against him and to help Skidmore." Affiant discussed with Goldstein the making of an

affidavit telling the truth and Goldstein stated "that he would like to, but that if he did he would certainly be disbarred." In the second affidavit, Green states that when he left his place of employment, i. e., Schwefer's Bakery, Goldstein was waiting for him and the following colloquy took place:

"Madrice, I didn't think that you would go out of your way to hurt me." That I replied, "I didn't do anything to hurt you. I simply told the truth." Whereupon Mr. Goldstein said, "Why did you go out of your way to help Johnson?"

"That I replied, "If my telling the truth helps Johnson that's all right, and if it hurts you, I'm sorry."

"That Mr. Goldstein said, "Skidmore knows about the Affidavits you made."

"That I replied, "That's all right with me. If Skidmore sent you to see me it makes no difference. If Skidmore was a man he'd tell the truth himself and tell you to tell the truth."

"That Mr. Goldstein said, "I can't do that because if I did I'd certainly be disbarred; and I might as well be dead as disbarred."

"That I replied to Mr. Goldstein, "You should have thought of that, Bill, before you gave the kind of testimony you did."

An affidavit by Engelbretson verifies the fact that Goldstein was waiting for Green and engaged him in conversation at the time and place related in Green's second affidavit.

Goldstein denies making any of the statements attributed to him by Green. He even denies that he had a conversation with Green. The court casts aside Green's testimony and accepts Goldstein's, largely on the ground that Green is a disbarred lawyer. Green is not shown to have had any connection with the case or any interest in the parties, and no motive is disclosed which would account for a false affidavit by him. We do not think it can be presumed that even a disbarred lawyer will commit perjury. On the other hand, as will be disclosed in this opinion, Goldstein had the most urgent motive to deny the affidavit made by Green, and no reason appears on the face of the record as to why he should be believed in preference to Green.

Edward J. Hess, an attorney in good standing in this court, makes an affidavit that while the appeal from the judgment of conviction was pending in this court, defendant Johnson, accompanied by his brother John E. Johnson, an attorney, met William Goldstein in his office, and states in part as follows:

"He, Johnson, opened the conversation by saying in substance that he was glad to have an opportunity to talk, which he followed by inquiring of Goldstein as to why he testified that 'he bought those properties for me when you know you bought them for Skidmore. Why did you lie?' Goldstein replied in substance that he

was sorry that he did but that he was a victim of circumstances and stated that he preferred not to discuss the matter."

This affidavit is corroborated by defendant's affidavit and by the affidavit of John E. Johnson. Goldstein makes an affidavit denying these affidavits in toto. He states:

"It was purely a frame-up on the part of Mr. Hess to get me in his office so Mr. Johnson and his brother could be there. Mr. Johnson and his brother, John E., threatened me and made attempts to strike me and for a moment it appeared as though they were going to commit murder."

Hess makes another affidavit in which he makes a logical explanation as to how the parties happened to be at his office at the particular time, reaffirms the substance of his previous affidavit, and denies that Goldstein was threatened by the Johnsons.

That the court had difficulty in discounting the testimony of Hess is rather plain. After pointing out that Hess was at one time counsel for some of the co-defendants in the case, the court places a strained construction upon his testimony by stating that it "could as well be taken to mean that he (Goldstein) was sorry he had testified at all, as it could be taken to mean that he was sorry he had lied." We do not think the testimony of Hess is capable of such construction. Even though we lay aside the affidavits of the defendant and his brother, which corroborate Hess, we have a direct issue between Hess, a reputable member of the Bar, and Goldstein. Any kind of logic or reason of which we are aware requires the acceptance of Hess' version as true and that of Goldstein as false.

Title to the Albany Park Bank was conveyed to Ted W. Goldstein (son of William Goldstein) on July 6, 1937. On the next day, Ted W. Goldstein executed a lease on said premises wherein it was recited that the premises had been purchased by him. The rent of \$250.00 per month was paid to William Goldstein by check, which checks were endorsed by William Goldstein, Agent, and also bore the additional endorsement of William Goldstein individually. This property was again leased on September 29, 1941, to the Hines Realty and Construction Company, for a term of five years, expiring September 30, 1946. The lease was signed Theodore Goldstein, by William Goldstein, his duly authorized agent. It provides for a rental of \$250.00 per month for the first nineteen months, and \$300.00 per month thereafter.

The affidavit of one Leo Blockus, employed in the County Treasurer's Office of Cook County, discloses that a receiver was appointed for this property on July 26, 1943, on account of non-payment of taxes. He states that William Goldstein came to his office and offered to pay \$150.00 per month to apply upon such

delinquency, which offer was rejected. William Goldstein subsequently came to the office and offered to pay \$250.00 per month to apply upon such taxes. Blockus inquired of William Goldstein who he was representing, and Goldstein replied: "That is my building, that is my property." Goldstein also advised him that the federal government had a lien against this property and if the County Treasurer did not accept his offer of \$250.00 per month, he (Goldstein) would turn the property over to the government. On July 28, 1943, William Goldstein was again at the office, and Blockus states that Goldstein said four or five times, "The property is mine, you will have to remove the receivers from my property." The court below again relies upon Goldstein's denial of these statements by Blockus and affidavits by Levine and Sampson. A reading of these latter affidavits discloses that the most which can be said of them is that affiants did not hear Goldstein say four or five times, "The property is mine." Furthermore, Levine made a subsequent affidavit in which he stated that Goldstein was talking to Blockus when he arrived at the office and obviously he did not know what was said before his arrival. Also, the other statement by Blockus in which Goldstein asserted "that is my property" is denied by nobody but Goldstein.

A significant circumstance which has been overlooked and which strongly corroborates Blockus is the fact that Goldstein was at the County Treasurer's office attempting to settle the claim for taxes. If, as he testified at the trial, this property belonged to Johnson, why was Goldstein so interested in preventing the property from being sold at a tax sale? Blockus certainly could have had no motive in making a false affidavit as to what Goldstein stated, and we see no basis for a finding other than that his testimony was true and that of Goldstein false.

At the insistence of the County Treasurer, while the property was in receivership, Goldstein took out insurance on the property, the premium on which was over \$300.00. In none of the numerous affidavits filed by Goldstein is any claim made that he was authorized to act for Johnson as agent in the management of this property. He never made any report to Johnson concerning rentals and never tendered to Johnson any of the rents collected. He never made even a single report to Johnson concerning the property, its maintenance, upkeep, management or rental. On the contrary, Marian Giles Sommer makes an affidavit that she was employed by William Goldstein from January 1938 to June 1939 as a stenographer, and that on the first of each month she typed income and disbursement statements relative to this building from long-hand statements given to her by Goldstein, and that at the direction of Goldstein such statements were enclosed in envelopes addressed by her and mailed to William R. Skidmore. Goldstein

denies the Sommer affidavit and, referring to the Albany Park Bank Building, states: "No statements were mailed or given to Mr. Skidmore or Mr. Johnson by me or anyone else."

Goldstein, in an affidavit dated September 8, 1943, states that he is holding the rent money on this building until such time as he is "released from the Internal Revenue Department which served me with a lien to hold all funds and property belonging to William R. Johnson." He does not state when such notice was served and there is nothing in the record to corroborate the fact that it was served. As will be subsequently shown, Goldstein offered the same excuse with reference to his retention of a \$7,500 escrow fund which he testified at the trial he received from Johnson. It has also been suggested that Goldstein was retaining this rent money in trust for Johnson. This is another novel and unbelievable theory. If Goldstein conveyed title to this property to Johnson, as he testified at the trial, he had no more right to collect and retain the rent without authority from Johnson, which he did not have, than he had to collect rent on any other building to which he was a stranger.

In an affidavit made by Goldstein on September 8, 1943, in reference to the Albany Park Bank Building, it is stated:

"The reason that title was not transferred to William R. Johnson was that he requested me to let title remain in my son as he intended to organize a bank sometime in the future and did not want his name connected with it."

In view of the fact that Goldstein was a lawyer and of the careful supervision which must have attended the preparation of his affidavits, this statement is difficult to account for. It is in direct conflict with his trial testimony that he "caused a quit claim deed to be delivered to Johnson." In other words, at the trial he testified that title was transferred to Johnson and now he states a reason why it was not transferred. On first impression, it might appear that in his affidavit he was referring to record title, but Goldstein must know that record title is not a matter of transfer and that its perfection is optional with the person who owns the actual title. If Goldstein transferred title to Johnson, as he testified at the trial, it was then entirely up to Johnson as to whether his title should become a matter of record.

This brings us to a consideration of the proof relative to the amended motion for new trial. Defendants offered in support of their amended motion the individual income tax returns of Theodore Goldstein, son of William Goldstein, for the years 1937-1943, inclusive, affidavits by Edward H. Wait and Frank Sampson, and a lease dated January 3, 1944 between Theodore Goldstein and Hines Realty and Construction Company, together with a

rider attached thereto. The government filed counter-affidavits by Theodore Goldstein, William Goldstein, Stanley A. Wodrick, and Edward H. Schulz. The income tax returns filed by Theodore Goldstein are signed and sworn to by him in his individual capacity, in which he charges himself with the income from the Albany Park Bank Building and takes credit for the loss. The return for the year 1940 is typical: It states the year the building was purchased, the price, the depreciation theretofore taken, and the remaining life of the building. It shows a rental income of \$900.00, claims a deduction of \$1,531.08 on account of real estate tax, takes a depreciation of \$1,000 for the taxable year, and shows a net loss for the year of \$1,631.08. This loss is deducted from a \$2,600 salary income, leaving the taxpayer with a net income of \$968.92. That William Goldstein was responsible for the making of such returns by his son Theodore, there can be no question. He dealt with the Bureau of Internal Revenue as the agent of Theodore, he took the returns to Theodore and procured his signature thereto, and any tax shown to be due was paid by him. No point is made, and we think none could be logically made, but that William is chargeable with the contents of the returns in the same manner and to the same extent as though they had been made by him.

It is the contention of the defendants, with which we agree, that the representation contained in these returns as to the ownership of this property is inconsistent with Goldstein's testimony at the trial that he purchased this property for and delivered a quit claim deed to Johnson. The trial court seems to agree with this theory in part. It states:

"Considering the mere filing of the income tax returns aforesaid and disregarding the circumstances of their filing * * * it could probably reasonably be argued that the filing by Theodore W. Goldstein of the returns could be held to be some evidence of the fact that during the years in question he had some interest in the property other than as the holder of the bare legal title."

The court then proceeds at great length to analyze the affidavits submitted by the government relative to the circumstances under which the returns were filed and finds that due to such circumstances they are without value in support of defendants' motion. It would unduly prolong our discussion to recite in detail these affidavits. We think we can show the government's position by a brief statement. It appears that affiant Schulz of the Bureau of Internal Revenue in Chicago received information that the income from the Albany Park Bank Building had not been reported and that rents were supposedly being paid to William Goldstein, who claimed to be agent for Theodore Goldstein. Affiant Wodrick, a deputy collector, was assigned to investigate, and had an inter-

view with William Goldstein. Wodrick's affidavit was made after such interview, in question and answer form, in the Bureau of Internal Revenue, long prior to the filing of defendants' amended motion. He testified that Goldstein, in response to a question as to who owned the property, stated, "I do not know the owner." Goldstein also stated with reference to the ownership of the property, "that he received money from persons unknown for the purchase of that building. He also stated that he didn't know whether it was Skidmore or Johnson's money."

Wodrick insisted that Theodore Goldstein must file returns inasmuch as the record title was in his name. To this, William Goldstein objected because Theodore was not the actual owner. A few days later, William Goldstein agreed to the preparation of the returns and stated; "that he would like to have the matter closed as soon as possible." Wodrick prepared the returns which were subsequently made by Theodore. Wodrick, subsequent to the filing of the amended motion, made an affidavit in which he stated that he understood his question and answer statement was to be used in the motion for new trial by Johnson and that he wished to modify such statement.¹ In this affidavit he states that what he intended to say was, "Goldstein stated to me that he did not know whose money it was that he had received for the purchase of that building. At no time did I ask Mr. Goldstein who gave him the money for the purchase of that building and at no time did he say that unknown persons gave him the money to purchase the building."

Affiant Schulz states that William Goldstein on numerous occasions told him that Theodore Goldstein was the title owner of record but was not the actual owner of this property. Affiant informed William Goldstein that Theodore would be required to make the returns even though he was not the actual owner. Affiant also stated that William Goldstein refused to sign an affidavit containing the statement that his son Theodore was "the owner." The affidavit of William Goldstein also states that he was advised by government officials that the returns must be filed by Theodore. Finally he agreed so to do, took the returns which had been prepared by Wodrick, had Theodore sign them, return them to Wodrick's office and paid the tax shown to be owing.

Theodore Goldstein states that he is not the actual owner, does not have and never did have any beneficial or financial interest in the building. As a reason for the filing of the returns, he states that he was told by William Goldstein that the Internal Revenue Department was insisting that he do so, that the situation had been

¹ It would be interesting to know under what circumstances Wodrick made this affidavit. We think it is entitled to little, if any, weight.

explained by William Goldstein to the Revenue Department, but nevertheless the Department required the filing of such returns.

These affidavits as to the "circumstances" are more illuminating for what they omit than for what they contain. For instance, this is the first time that Theodore Goldstein has appeared as a witness in this case, although the defendants attempted without success to procure his attendance at the trial. William Goldstein testified at the trial, "Subsequently there was a quit claim deed delivered to William R. Johnson by my son." Theodore, evidently the only person in a position to corroborate William Goldstein on this important testimony, when presented with an opportunity to do so, either refuses or fails. Is it possible that this was a mere inadvertence or has the government abandoned its effort to defend this portion of William Goldstein's testimony? That the latter appears more reasonable is also shown from an affidavit of William Goldstein. After reaffirming his testimony given at the trial, his affidavit states:

"And, in particular restate that the amount expended for the purchase of the Albany Park Bank Building property was \$59,887.05 and that I got that money from Mr. Johnson in the form of currency."

No place, however, does he restate that his son Theodore delivered to Johnson a quit claim deed to the property. Another pertinent observation in this connection is that it is no longer claimed that Goldstein holds this property in trust for Johnson.

Another glaring omission from these affidavits (other than the first affidavit of Wodrick) is their failure to make any reference to any inquiry by the Revenue agents or any statement by Goldstein as to who owned this property. Is it conceivable that the Revenue agents in their attempt to ascertain who was chargeable with the income from this building made no inquiry of Goldstein as to who was the owner? To think so is to reflect upon their intelligence. We have no doubt but that Wodrick told the truth when he stated that he attempted to do so and that Goldstein denied knowledge as to ownership and knowledge as to who had furnished the money for its purchase. Furthermore, is there any logical basis for the thought that if Goldstein be the honest, truthful man the government and lower court would have us believe that he would have remained silent upon such a vital matter? Would not he have proclaimed to the Revenue agents, as he did at the trial, "I bought this property for Johnson and title was conveyed to him"? But whether honest or not, would he not have divulged the ownership of Johnson rather than persuade his son to commit perjury? If he was holding this property in trust for Johnson, as was formerly claimed, he was holding the income in trust. Why did he not offer to turn the income over to the Revenue

Department to apply on a lien which the government had against Johnson?

The Revenue officials no doubt were familiar with the alleged false testimony of Goldstein, his leasing of the property, collection of the rents and his many other activities wholly inconsistent with his trial testimony, and felt that it was time for Goldstein either to disgorge himself of this income or pay a tax thereon. Goldstein was willing to claim he was holding it in trust for Johnson as long as it did not interfere with his rights to collect and convert, but when confronted with the latter situation he, a lawyer of many years' experience, decided to repudiate the contention that the property was Johnson's and claim it for himself.

We think the "circumstances" destroy themselves, but more than that, the court, in accepting them as destroying the evidentiary value of the returns, has overlooked the essential point in the matter. After all, they are either true or false. Neither the court in its opinion nor the government in its brief makes any contention one way or the other; in fact, the point is not mentioned. If the returns are true, what difference does it make concerning the circumstances under which they were filed? If they are true, their probative value is no different than if they had been filed without any interference on the part of the Revenue agents. Certainly it cannot be plausibly contended that the activities of the Revenue agents were such that William Goldstein was deprived of his free will in the matter and that he knowingly procured from his son Theodore returns which were false. If the lower court properly disregarded them, it must have been because of their falsity, but even so, it would be of little benefit to the government. If such be the case, it shows the ease with which Goldstein can adjust himself under oath to serve his own purpose, even though it involves the commission of perjury or subornation thereof. If Goldstein was on trial for perjury, we think a court would admit the returns in evidence and that a jury would accept them at their face value, notwithstanding the "circumstances" under which they were obtained.

The affidavit of Frank Sampson has to do with the leasing of the Albany Park Bank Building. He states, concerning the lease which expired on September 30, 1946, and which we have heretofore mentioned, that the rent during all the time was paid to William Goldstein as agent for Theodore Goldstein, and that generally William Goldstein came to the building each month to collect it; further, that in 1943 he informed Goldstein that he would like to have an option to renew the lease for ten years. In reply, Goldstein stated an option was not necessary, "that I could stay in possession of the premises as long as I wished." Upon affiant's insistence on a written option, Goldstein stated "that I

would have to wait until the court ruled in the 'Johnson case' which was then pending before Judge Barnes. I then asked Goldstein if Johnson had anything to do with the property. Goldstein replied 'Johnson never had any interest in the property and has nothing whatever to do with it.' Finally Goldstein suggested that affiant prepare a lease and that he would take it to Hot Springs, Arkansas, where he was going to meet his son Theodore who was in the Service. This was done and the lease was signed by Theodore. The lease expires September 30, 1956. It contains all the incidents usually found in a lease of which the lessor is the owner of the property.

Goldstein in his affidavit denies all the statements attributed to him by Sampson concerning Johnson's interest in the property. The trial court points out the fact of Goldstein's denial without comment, and as to the lease quotes from its former opinion concerning the previous lease, in which it stated: "This is not inconsistent with Goldstein's testimony on the trial." We suppose, according to this reasoning, if Goldstein should lease this property from now until eternity and retain the rents as long as he lives, it would not be inconsistent with his testimony that he purchased this property for and conveyed the title to Johnson. Further, it would not be inconsistent with the government's theory that Johnson was the owner. We do not agree with such reasoning. We think this circumstance alone, unexplained as it is, comes close to establishing the falsity of Goldstein's trial testimony.

Thus we have the testimony of Green and Hess (not to mention the defendant Johnson and his brother John Johnson) of admissions made by Goldstein that he testified falsely at the trial. We have the testimony of Blockus that Goldstein, referring to the Albany Park Bank Building, stated "that is my building, that is my property. The property is mine." We have the testimony of Sommer that Goldstein sent statements of the income and expenses on the building to Skidmore and not to Johnson; the testimony of Wodrick, a Revenue agent, that Goldstein stated, "I do not know the owner, that he received the money from persons unknown, for the purchase of the building, that he didn't know whether it was Skidmore's or Johnson's money"; and the testimony of Sampson that Goldstein stated, "Johnson never had any interest in the property and has nothing whatever to do with it." In addition, the income tax returns and the long-term leasing by Goldstein are utterly inconsistent with his trial testimony. Furthermore, this direct testimony finds strong corroboration in the numerous circumstances which we have related. More than that, there must be considered not only the motive which prompted Goldstein's testimony at the trial but his present motive in making affidavits in an obvious effort to serve his own interest. Taking

all of these things together, we have a strong and abiding conviction that Goldstein's testimony concerning the Albany Park Bank Building was false.

We shall now refer to the escrow items, one in the amount of \$10,000 and the other in the amount of \$7,500. Goldstein testified at the trial that he received the \$10,000 from Johnson for the purchase of certain property and that he placed it in escrow with the Chicago Title and Trust Company. This was denied by Johnson. Goldstein also testified at the trial that he received the \$7,500 from Johnson in the form of currency and deposited it in the State Bank of Evanston at Johnson's request. This was also denied by Johnson. Shortly after the trial, Goldstein made a demand on the Chicago Title and Trust Company for the return to him of the \$10,000 escrow deposit. J. Lawrence Holleran, an attorney for the trustee, testified by deposition that Goldstein at the time he was attempting to obtain the withdrawal of the escrow stated that he was representing himself and no other person and "it was my money that I put up and I want it back." He then agreed to pay a reasonable attorney fee, in order to avoid the filing of a suit. He offered \$100.00 for release of the deposit. Again Goldstein said to affiant over the telephone, "All I am interested in is my money. It is my money I put up and you can't deliver under the contract and I want my money back."

Guild, the trustee, in a deposition also states: "Mr. Goldstein said he wanted the return of his money that was on deposit in escrow." Affiant asked Goldstein who was the owner of the money and he replied "that he was the owner of the money." These statements of Guild and Holleran are not denied by Goldstein, although he does state the money was given him by Johnson and that it is Johnson's money. Frank Fowler testified that Goldstein told him "that he had \$7,500 in escrow in a bank in Evanston and \$10,000 in escrow in the Chicago Title and Trust Company. That Mr. Goldstein later told me he withdrew the \$7,500." It appears that some law suit or claim was pending against the Bon-Air Country Club and Goldstein was unable to obtain the deposit until that suit or claim was settled.

The \$7,500 deposit was withdrawn from the Evanston Bank on October 30, 1944, shortly after the conclusion of the trial, and a receipt given by Goldstein in his individual capacity. He has never offered to return it to Johnson, from whom he testified at the trial it was received. In fact, he still retains it, as far as the record discloses. In an affidavit executed September 10, 1943, Goldstein states:

"The \$7,500 returned to me by the State Bank and Trust Company was not returned to Mr. Johnson or tendered to him because sometime in the early part of 1940 I was served with a notice by

the Internal Revenue Collector's Office to withhold all monies and properties which I had in my possession for Mr. William R. Johnson subject to their orders."

That statement of Goldstein's is uncorroborated. If there is any method known to the law by which one man's money can be held by another under such pretext, we do not know about it. On its face it sounds unreasonable and unbelievable. The record shows that Johnson owes money to the government and, according to Goldstein, he has \$7,500 which belongs to Johnson in his possession with the government's knowledge and the government does nothing about it.

Notwithstanding Goldstein's affidavit that the money for these escrow deposits was given to him by Johnson and that it was Johnson's money, we have two disinterested witnesses who swear as to the \$10,000 deposit that Goldstein said "that he was the owner of the money." Again, as to these deposits, the question naturally arises as to why Goldstein had any business obtaining their withdrawal if they were the property of Johnson. It is not even claimed by Goldstein that he had any authority from Johnson to do so. These facts and circumstances persuasively point to the falsity of Goldstein's trial testimony that these deposits were the property of Johnson.

The Bon Air Country Club was perhaps the most important of the properties involved for the reason that not only the purchase price but the large expenditures which were made upon it were charged in toto to Johnson. As already stated, it has been the government's contention and we assume it still is, that Johnson was the sole owner of this property; otherwise, all of the expenditures could not properly have been charged to him. The government in its brief summarizes Goldstein's testimony with reference to this property thus:

"Briefly stated, this testimony is to the effect that Goldstein, at the request of Johnson, purchased this property for Johnson with \$75,000 given him by Johnson and delivered a deed to Johnson."

It might be added that title to this property was taken in the name of Ted Goldstein and a quit claim deed subsequently delivered to Johnson.

Johnson denied that Goldstein purchased this property for him and denied that he gave Goldstein the money so to do. He admitted that title was in his name by reason of a quit claim deed from Ted Goldstein but testified that he had conveyed a one-half interest to Skidmore; therefore, Johnson, according to his testimony, was the owner of a one-half interest in this property and Skidmore was the owner of the other one-half interest. Here again, the government contends that the only material testimony of Gold-

stein is that he received the \$75,000 from Johnson for the purchase of this property. We think there is merit in this contention, even though inconsistent with the strong reliance which the government has heretofore placed on Goldstein's testimony as showing ownership by Johnson.

There is proof, however, that Goldstein testified falsely regarding this property, even though his trial testimony be limited in the manner urged by the government. In an affidavit by Frank Fowler, a retired business man, it was stated that William Goldstein told him "that he had bought the property known as the Bon Air Country Club for his client, Mr. William Skidmore * * *. That Mr. Skidmore had given him (Goldstein) the money to buy the said Bon Air Country Club property. That the said Mr. William Goldstein at all times referred to Mr. William R. Skidmore as 'the boss'." It will be noted that this statement is in direct conflict with Goldstein's trial testimony that he obtained the money from Johnson. Goldstein denies the statements attributed to him by Fowler. Again the trial court rejects Fowler's testimony and accepts that of Goldstein, largely on the basis of Goldstein's statement that Fowler was a discharged former employee of his and was biased against him. There is nothing in the record, however, which impugns Fowler's reputation in any manner. He is not shown to have any connection with any of the parties or any motive for making a false affidavit.

In 1942, Johnson filed a partition suit in Lake County, Illinois, covering the Bon Air Country Club (and other property), in an attempt to force a disclosure of Skidmore's interest. Maurice Green testifies that he had a conversation with Goldstein and Skidmore in the latter's office in March 1942, in which Goldstein stated, "that he (Skidmore) could not file an answer declaring his interest in the properties because if he did that such an answer in the partition suit would definitely establish his testimony (Goldstein's) in the trial of William R. Johnson as completely false. He further stated that Mr. Skidmore therefore could not file an answer, but would have to take his chances on working the matter of his interest in the property out with Johnson after the whole thing was over." Aflant is the same person heretofore referred to as a disbarred lawyer. In addition to this, the court finds that this statement is unreasonable and unworthy of belief. The record discloses, however, without dispute, that Johnson filed the partition suit making Skidmore a party and that the latter refused to answer. It also discloses, without dispute, as will be herein-after shown by the affidavits of March and Peacock, that Johnson did convey to Skidmore a one-half interest in this property and that such conveyance was made under the direction of Goldstein.

Therefore, the statement which Green attributes to Goldstein in this affidavit is consistent with the undisputed facts.

Walter Henrichsen testifies that he was employed at the Bon Air Country Club and that he heard Skidmore say "that he didn't want anyone to know that he (Skidmore) had any interest in the Bon Air Country Club"; that affiant in the early part of March 1941 was served with a summons involving the Bon Air Country Club property (and other property) that he spoke to Mr. Skidmore about the summons; that Mr. Skidmore stated to this affiant that he (Skidmore) would not contest the suit involving the property at this time; that he (Skidmore) had in his possession unrecorded quit claim deeds to the Bon Air property (and other property) * * *; that if any more papers were served on this affiant pertaining to Bon Air to take all such papers to Mr. Goldstein"; that affiant on several occasions was told "to take the bills to the creditors and instruct the said creditors that Mr. Skidmore had nothing to do with the Bon Air Country Club"; and that on several occasions he was told by William Goldstein "that no mail was to be received at the Bon Air Country Club addressed to William R. Skidmore."

This affidavit of Henrichsen is not so important as the means disclosed by the court for its elimination. The government filed an affidavit by Wilbert F. Crowley, an assistant states attorney of Cook County, in which he states that Henrichsen testified as a witness for the State in a kidnapping case and described in detail his participation in such crime. It is obvious that Crowley's affidavit was immaterial and could not properly be used for the purpose of discrediting Henrichsen. However, it was used for that purpose.

Joseph Shaffron, engaged in the lumber business, makes an affidavit that he visited Skidmore about September 1, 1940; and that Skidmore in the presence of Goldstein stated, "Joe, they are trying to pin one-half ownership of the Bon Air on me. You know, Joe, that I own it, but if anyone asks you, tell them that I have no interest in it."

To us the most remarkable disclosure in this record is that contained in the affidavits of Beatrice Marsh and William R. Peacock. The former was a stenographer employed by William Goldstein during the years 1938 to 1942. In her affidavit, dated July 1, 1943, she states that on April 21, 1939, at the request of William Goldstein, she prepared deeds to certain parcels of land, including Bon Air, in which Ted W. Goldstein was named as grantor and William R. Johnson as grantee, and that on July 20, 1939, at the request of William Goldstein, she prepared deeds for certain parcels of land, including Bon Air, conveying an undivided one-half interest in all of said parcels of land. These deeds were

signed by William R. Johnson as grantor and named William R. Skidmore as grantee. Peacock, a lawyer, during the trial of this case was employed by Goldstein and served as successor-trustee at the request of Goldstein to the property known as the Bon Air, Country Club. His affidavit is dated July 20, 1943, at which time he was serving as a Major in the United States Army. He states in his affidavit that during the summer of 1939, the exact date of which he is not certain, William Goldstein asked him to acknowledge several deeds signed by William R. Johnson, which deeds conveyed an undivided one-half interest in certain parcels of real estate to William R. Skidmore, who was a client of William Goldstein. He further stated that he did not know the legal description of the parcels conveyed but he did know that one of such properties was known as Bon Air Country Club; further, that as a notary public he acknowledged such deeds and returned them to William Goldstein.

If these two witnesses have spoken the truth, which there is no reason to doubt, they furnish convincing proof of the truth of Johnson's trial testimony that he was the owner of only one-half interest in Bon Air, as well as some of the other properties involved. If true, they just as conclusively shatter the foundation upon which this prosecution has been constructed. They furnish strong circumstantial proof of the falsity of Goldstein's testimony and demolish the implication which was drawn therefrom and used by the government to such good advantage.

Moreover, these affidavits bring to light Goldstein's carefully designed plan to preserve as a secret the fact that his friend Skidmore was the owner of one-half interest in the property. They demonstrate, if any further demonstration is necessary, his motive in giving false testimony at the trial, as well as the motive back of his testimony which resulted in his own indictment for perjury. They disclose a willingness on his part to aid in the conviction of Johnson and his co-defendants upon a premise known by him to be false. This must be so, as he had delivered into his possession deeds prepared at his direction by which Skidmore became the owner of a one-half interest in Bon Air and other property. In our considered judgment, Goldstein testified falsely at the trial and has been so thoroughly discredited that his affidavits offered in opposition to the motion for a new trial carry little, if any, weight. The proof therein contained affords no substantial support for a finding that he testified truthfully at the trial.

We see no reason to prolong this opinion by a discussion of other proof and circumstances relied upon by defendants to show that Goldstein testified falsely concerning other material matters, and particularly as to other properties which he testified he purchased with money furnished by Johnson. It is sufficient to state that

such proof is of a nature similar to that which we have discussed. We have purposely confined our discussion to his testimony concerning matters vital to the government's case.

As our opinion discloses, we have reached the conclusion that Goldstein testified falsely at the trial. The conviction which we entertain in this respect is without reservation. In this situation, what is our duty as a reviewing court? Must we lay aside such conviction in deference to a contrary finding by the trial court? To do so is to acknowledge our impotency to correct what otherwise may amount to a gross miscarriage of justice. We are of the view that the fundamental right to a fair trial is not dependent upon a thread of such tenuous nature.

In our former opinion (142 F. 2d 588), we sustained the finding of the trial court on the theory that we had the right of review only for the purpose of determining whether there had been an abuse of discretion. In so doing we emphasized that the trial court had before it "the record made upon the trial and the demeanor of Goldstein and others upon the stand"; also that "several of those who made affidavits for the defendants in support of their motion were witnesses at the trial. So it was not merely a printed record that the District Court had before it." We then said: "We cannot say, in the light of the whole record before the District Court, that the so-called newly discovered evidence inevitably leads to the conclusion that Goldstein had testified falsely."

True, there were affidavits submitted in support of the original motion made by persons who were witnesses at the trial. Of such affidavits, however, we think it may be said that they were immaterial to the issue before the court and were subject to a motion to strike if such motion had been made. In our present consideration of the case, we have considered no evidence, whether by affidavit or in documentary form, which was offered at the trial (except, of course, the affidavits of the defendant Johnson and the witness Goldstein). Therefore, the affidavits which we have considered were made by persons whom the trial court neither saw nor heard as witnesses. All the proof which we have considered (except the affidavits of Marsh and Peacock) had to do with matters and events subsequent to the trial, and some a long time subsequent. More than that, none of the persons whose affidavits we have considered (except Peacock) were subpoenaed as witnesses at the trial.

Under such circumstances, it would appear that we are in as good a position to evaluate the testimony as the trial court. This was the view expressed in *Hamilton v. United States*, 140 F. 2d 679, where a similar question was considered. There, it was held that there had been an abuse of discretion on the part of the trial court

because of the improper construction which that court placed upon affidavits submitted in support of a motion for new trial. The court (page 681) stated:

"An affidavit of newly discovered evidence in a criminal case should be construed fairly to the accused. Ambiguities should not be resolved in favor of the prosecution without inquiry of the proposed witness. * * * We think it was an abuse of discretion when the trial court indulged in a hypothetical interpretation of the statement of newly discovered evidence in order to make it consistent with the testimony it was intended to rebut."

It has been held in civil cases that where proof is submitted by deposition, affidavits and documents, the reviewing court is in as good a position as the District Court to make deductions and conclusions. Himmel Bros. Co. v. Serrick, 122 F. 2d 740; Nashua Mfg. Co. v. Berenzweig, 39 F. 2d 896. We see no reason why this rule is not even more appropriate where it is asserted the rights of a defendant in a criminal case have been prejudiced. The trial judge, of course, saw and heard Goldstein at the trial. Assuming that his appearance at the time was favorable, it is still difficult to see how the court could properly take that circumstance into consideration in weighing his affidavits in the instant matter against affidavits made by persons whom the court had not seen or heard. If such a yardstick was to be used, we think the court should have called the witnesses who had made affidavits and required their interrogation in open court, so that their testimony could be properly evaluated in connection with that of Goldstein.

It is not necessary, however, that we retract our previous holding regarding the "abuse of discretion" rule. We now think that we accorded it a more strict application than the circumstances justified. Moreover, further proof was submitted in connection with the amended motion which, as we have attempted to show, furnishes strong additional support for the contention that Goldstein's testimony was false.

It is our conclusion that the proof offered in support of the original and amended motion, with the attending circumstances, unerringly points to the fact that Goldstein's trial testimony was false. The finding of the trial court to the contrary was, in our judgment, an abuse of discretion. We reach this conclusion with diffidence, and in so doing attribute to the District Judge a motive as laudable and a purpose as honest as we claim for ourselves.

The lower court held applicable the rule announced in *Berry v. Georgia*, 10 Ga. 511, as to the requirements on a motion for new trial because of newly discovered evidence. In our former opinion, we quoted the rule therein announced, approved its application and cited numerous cases wherein it has been approved. Repetition of such rule and authorities is here unnecessary. The rule of the

Berry case was applied on the premise that there had been no showing of the falsity of Goldstein's testimony and therefore the instant motion should be considered as an ordinary motion for new trial. It was upon our affirmance of the lower court's finding that Goldstein had not testified falsely that we approved the application of the rule.

We now have disapproved of the finding of the lower court relative to the falsity of Goldstein's testimony. It necessarily follows, so we think, that the rule of the Berry case becomes inoperative. It therefore becomes unnecessary to discuss the rule of that case or the reasons assigned as to why defendants have failed to meet its requirements.

We think that logic and sound reasoning require the application of a different rule. This must be so for the reason that on an ordinary motion for new trial the court is concerned with the probable effect which the newly discovered evidence might have upon another trial. In contrast, where the motion is based on false swearing, the concern of the court must be as to the probable effect produced on the trial already had. In the former case, the court looks to the future, in the latter case to the past, and the sole question is whether the defendant's right to a fair and impartial trial has been prejudiced by reason of the false testimony.

There are cases which support the general view which we have expressed. Pettine v. Territory of New Mexico, 201 Fed. 489; Martin v. United States, 17 F. 2d 973; Larrison v. United States, 24 F. 2d 82, 87; State v. Mounkes (Supreme Court of Kansas), 138 Pac. 410. The rule is aptly stated by this court in the Larrison case (page 87) that a new trial should be granted when,

"(a) The court is reasonably well satisfied that the testimony given by a material witness is false;

"(b) That without it the jury might have reached a different conclusion.

"(c) That the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial."

We have already concluded that Goldstein's testimony was false. We think we need not labor the point that the jury might have reached a different conclusion without it. In fact, it was upon his testimony that the government placed much reliance that Johnson was the owner of certain properties, by reason of which he was charged with all of the purchase price as well as with the enormous expenditures made thereon. As was said in Martin v. United States, supra, page 976:

"There is no way for a court to determine that the perjured testimony did not have controlling weight with the jury, and, notwithstanding the perjured testimony was contradicted at the trial, a new light is thrown on it by the admission that it was false; so

that on a new trial there would be a strong circumstance in favor of the losing party that did not exist and therefore could not have been shown, at the time of the original trial."

Again, as stated in the Pettine case, supra, page 494, where the court considered a similar question:

"Is it clear beyond doubt that this testimony did not turn the scales against him or remove from the mind of some juror a reasonable doubt of his guilt? Can it be truthfully said that it was not a gross abuse of its discretion for the trial court to refuse to grant a new trial here and to refuse to exclude this false testimony from the minds of the triers of this fateful issue?" *

Other cases which have held that a reversal was required on account of error which might have affected the result are *Miller v. Oklahoma*, 149 Fed. 330, 339; *Little v. United States*, 73 F. 2d 861, 866; *United States v. Dressler*, 112 F. 2d 972.

As to requirement (c) of the Larrison case, we think it may be taken for granted that the defendant Johnson knew of the falsity of Goldstein's testimony at the time it was given and likewise that he was unable to meet it. Certainly he was unable to meet it with the proof now submitted in support of a motion for new trial for the reason, as already shown, that all of such proof, with certain minor exceptions, was not in existence at the time of the trial. It relates to matters which have occurred since that time. While it may or may not be pertinent, we disagree with the lower court in its conclusion that there has been an unreasonable delay in the presentation of the newly discovered evidence. True, it has now been more than four years since the judgment was entered against the defendants, but a mere statement of the time is misleading unless considered in connection with what has transpired in the meantime. Without attempting to fix the date when Johnson and his counsel obtained each bit of newly discovered evidence, we think it can be said, with certain minor exceptions, that the record discloses its discovery subsequent to September 15, 1941, the date of the entry of this court's judgment on the original appeal. This court held that the indictment was void and we suppose that was the law of the case until June 7, 1943, when our judgment was reversed by the Supreme Court. Certainly during that time there was no occasion for a motion for remand because of newly discovered evidence.

The record discloses that during the time the case was pending before the Supreme Court, this newly discovered evidence, or at least a portion of it, was submitted to the Department of Justice with a request for an investigation of the charge that Goldstein had testified falsely. The Supreme Court's mandate provided that it was without prejudice to defendants' right to present to this court a motion to remand on account of newly discovered evidence. We can say of our own knowledge that since that time

defendants have acted promptly and without any unreasonable delay. Furthermore, the proof offered in support of the amended motion was discovered during the pendency before the Supreme Court of defendants' application for certiorari from our former decision affirming the District Court's denial of the original motion for a new trial. While the situation is unusual, perhaps extraordinary, we are of the view that there has been no delay so unreasonable as to preclude consideration of the proof which defendants have presented.

The court below also concluded that all but a few of the items of newly discovered evidence were merely cumulative of other like items presented at the trial. Again, we doubt if this conclusion is material in the instant situation. As this court said in the Larrison case, *supra* (page 87) :

"We agree with the court in *Martin v. U. S. (C. C. A.)*, 17 F. 2d 976, and hold that courts should not necessarily deny motions for new trials when the perjured testimony is merely cumulative. The fact that the testimony is cumulative only, should no doubt be considered, but it is not conclusive on the motion for new trial."

Furthermore, we do not think that most of the items, in fact, none of those which we have discussed and relied upon in this opinion, are cumulative. It appears that the lower court considered as cumulative any proof which showed Goldstein's trial testimony to be false, on the theory that such proof at the same time corroborated or was cumulative to that of the defendant Johnson. If such reasoning is sound, we think it is not, it would preclude the allowance of a motion for new trial based on false testimony by a government witness in every case where such testimony was disputed by the defendant at the trial. In *People v. Royals*, 356 Ill. 628, the court, in discussing the rule as to cumulative evidence, on page 639 stated :

"The rule stated above does not bar the granting of a new trial on the ground of newly discovered evidence if the new evidence relates to a material point contested on the trial, otherwise there would scarcely ever be a new trial granted on such ground."

It is our conclusion that the defendants have brought themselves within the rule of Larrison and kindred cases and that the prejudicial effect of Goldstein's false testimony can only be remedied by a new trial. The order appealed from is therefore reversed and the cause remanded, with directions that the motion for new trial be allowed.

MINTON, Circuit Judge, Dissenting.

I am unable to agree with the majority opinion because I think it clearly invades the province of the trial court. We do not sit

here to pass upon the facts upon this motion. That is for the trial court. We sit only to review the trial court's action, and to determine whether or not the trial court abused its discretion.

In reaching this determination, we do not dispute with the trial court on the conclusions it reached on the facts. We determine only whether the trial court reached a decision it might reasonably have reached upon the facts before it; not whether we, on those facts, might have reached a different conclusion. If the trial court reached a conclusion while it might reasonably have reached, and excluded nothing from its consideration which it ought to have considered, it has not abused its discretion. That is the only question we have to determine. I think a fair review of the trial court's decision requires us to conclude that there was a basis in reason for its decision and that there was no abuse of its discretion.

The trial judge tried the case and heard the testimony of the witnesses whose veracity is now in question. He found against them after a most careful consideration of each contention of the appellants. He had before him not only the witnesses at the trial, but all of the record. He did not exclude anything. He submitted his views in a written opinion covering some sixty pages, far too long to be incorporated here. We upheld his decision and judgment on the original motion for a new trial on the ground of newly discovered evidence (142 F. 2d 588). The trial court held that the showing made on the amendment to the motion, which is now before us, contained nothing to warrant it in holding differently. With this view I am in accord.

The chief controversy revolves around the ownership of a property located at 3424 Lawrence Avenue, Chicago, known as the Albany Park Building. Failure to report the income from this property was one of the charges against Johnson on the original trial. At that trial, William Goldstein testified in part as follows: "I was requested by Mr. Johnson to go out there and purchase the building for him. * * * I purchased that property at the request of Mr. Johnson. * * * I can state that the amount expended for the purchase of that property was \$59,887.05. I got that from Mr. Johnson in the form of currency. Title to that property was taken in the name of Ted W. Goldstein, my son. Subsequently there was a quit claim deed delivered to Mr. William R. Johnson by my son. This Albany Park Building property was purchased July 16, 1937."

The defendant Johnson, at the trial and by affidavit filed in the original motion for a new trial, denied that he had ever had any such transaction with Goldstein.

The jury, however, on the original trial resolved this issue against the defendant Johnson; and the Supreme Court, in a very sharp opinion somewhat critical of this court, stated most emphatically that the evidence was sufficient to sustain the verdict as to all defendants. Thus, the sufficiency of the evidence is not open to us for consideration. Considering the evidence most favorable to the Government, upon the record as originally presented to the Supreme Court, the jury was justified in finding from the testimony of William Goldstein that he had purchased the Albany Park Building at the request of Johnson, with money furnished him by Johnson, and that the title had been taken in the name of William Goldstein's son, Theodore Goldstein, who afterwards delivered to Johnson a quit claim deed for the property. Title was taken in Theodore Goldstein's name to conceal the fact that Johnson, who intended to open a bank in the building, was the owner. It should be noted that Goldstein testified only to facts of the transaction. He did not attempt to testify categorically that Johnson owned that property. Any such statement would probably have been objectionable as invading the province of the jury. In any event, the jury would have been warranted in finding from Goldstein's testimony that Johnson was the owner of the Albany Park Building.

The new evidence submitted by the defendants on their amended motion for a new trial consists of the photostatic copies of the individual income tax returns of Theodore Goldstein for the years 1937, 1938, 1939, 1940, 1941, 1942, and 1943, and the affidavits of Edward Wait and Frank Sampson. The affidavit of Edward Wait is wholly immaterial. The income tax returns show that Theodore Goldstein returned the rentals collected from the Albany Park Building each year as his individual income and in each return claimed depreciation on the building. The affidavit of Frank Sampson shows that on January 3, 1944, Theodore Goldstein gave an option for a ten year lease on the property to the Hines Realty and Construction Company, of which Sampson was the president. This transaction was handled by William Goldstein, since his son was then in military service.

The defendants contend that these facts, because they evidence dominion over this property by Theodore Goldstein as though he were the real owner, are conclusive proof that William Goldstein testified falsely on the original trial, and that Theodore Goldstein is the real owner of the property—not Johnson. It does not seem to me that these exhibits attached to the amended motion force any such conclusion. For all that appears in the record, the returns of Theodore Goldstein may be false. He may have been untrue to his trust when he performed these acts of ownership and dominion.

In that event his acts with reference to this property would not be in conflict with the testimony of his father, William Goldstein. However, the defendants say that since William Goldstein represented his son in leasing the property and collecting the rents and since, as the defendants assert in their amended motion and in their briefs, William Goldstein procured these income tax returns from Theodore Goldstein and filed them, he was therefore a party to Theodore Goldstein's acts and representations of dominion and ownership over the property.

But the defendants do not disclose all the circumstances surrounding the renting of this property and the disposition of the rents. The evidence on the original motion for a new trial for newly discovered evidence showed that in September 1941, the property had been leased by William Goldstein, as agent of Theodore Goldstein, to the Hines Realty and Construction Company for a period of five years. William Goldstein is reported to have said that the rents which he collected were being held by him, although not in a separate fund, for whoever was the true owner of the premises and that he had been served with a notice by the Bureau of Internal Revenue to hold all property and funds of William R. Johnson.

The Government, in response to the present amended motion for a new trial, has shown by the affidavits of William Goldstein and Theodore Goldstein, that Theodore Goldstein was merely the holder of the legal title and had no other interest of any kind whatsoever in the property. The Government has also shown that the income tax returns on which Theodore Goldstein returned the rentals from the Albany Park Building were all either delinquent or amended returns. For the years 1937 to 1940, he had filed no returns at all and in 1941, 1942, and 1943, when he had voluntarily filed returns, he had made no claim to rentals from the Albany Park Building.

It appears that the filing of these delinquent and amended returns came about when on April 17, 1944, Edward H. Schultz of the Bureau of Internal Revenue in Chicago was advised by an anonymous telephone communication that the income from the Albany Park Building had not been reported by anybody but that rents were supposedly being paid to William Goldstein who claimed to be agent for Theodore Goldstein. Mr. Schultz assigned Mr. Stanley A. Wodrick, a deputy collector, to conduct an investigation. Mr. Wodrick talked to the tenant of the building and thereafter contacted William Goldstein. Mr. Wodrick insisted that Theodore Goldstein was the owner and was the person obligated to report the rents received from the property since the title still stood in his name. William Goldstein objected, saying that

Theodore Goldstein was not the actual owner but was only the title holder of record. Mr. Wodrick called on William Goldstein about ten times thereafter, each time contending that Theodore should return the rents in his income tax returns. But William Goldstein continued to protest that his son was not the real owner of the building and was not under a duty to return the rents.

Representatives of the Bureau of Internal Revenue sought to get William Goldstein to sign a written memorandum containing the following recital:

"I have acted as attorney and agent for my son, Theodore, the owner, in the management of the property located at 3424 Lawrence Avenue, Chicago, Illinois, purchased for my son Theodore in 1937. * * *"

William Goldstein, according to Mr. Schultz, "would not sign any affidavit containing any statement that his son Theodore was the owner of the property located at 3424 Lawrence Avenue, Chicago, Illinois, or containing any statement that he purchased that property for his son, Theodore."

The representatives of the Bureau of Internal Revenue not only insisted that Theodore Goldstein was required to return as his individual income the rentals from the Albany Park Building, but also claimed that the entire sum paid as purchase price for the property was income to Theodore Goldstein in 1937, the year when the property was purchased, and demanded payment of more than \$13,000 as that year's tax. William Goldstein emphatically denied that his son should assume this liability.

However, after numerous demands by the Bureau that Theodore Goldstein return the rentals on his individual income tax returns and after threats to assess the much larger tax claimed against Theodore Goldstein if he refused, William Goldstein acquiesced. Delinquent returns for the years 1937, 1938, 1939, and 1940, and amended returns for the years 1941, 1942, and 1943, were prepared by the representatives of the Bureau of Internal Revenue and delivered to William Goldstein. He obtained his son's signature on the returns and paid the tax on behalf of his son. The rents collected were sufficient to cover the tax.

The anonymous manner in which the delinquency was reported, the compulsion under which the returns were made, and the continued insistence of both Theodore Goldstein and his father that Theodore was not the owner of the property, but merely the title holder of record, are corroborated by the agents of the Bureau of Internal Revenue and are not disputed by the defendants in any respect. Returns made under these circumstances were not the voluntary returns of Theodore Goldstein and were inconsistent

with his own view of his relationship toward this property, and with the view of William Goldstein.

The District Court, having considered these additional facts shown on the amended motion together with the facts previously before it on the original motion for a new trial on the ground of newly discovered evidence, again reached the conclusion that William Goldstein did not commit perjury on the original trial of the defendants and that he has not since recanted:

The facts added to the records in this proceeding which show the making and filing of the delinquent and amended income tax returns filed by William Goldstein, together with the circumstances under which they were made and filed, do not prove that William Goldstein voluntarily took a position that the property in question was the property of Theodore Goldstein.

Although the leasing and granting of the option to lease showed dominion over the real estate, there is no evidence that William Goldstein held for, or ever paid to, Theodore Goldstein, the rents collected.

The additional evidence adduced in support of the amended motion adds nothing to the proof that was submitted to us on the original motion for a new trial on the ground of newly discovered evidence. In affirming the action of the District Court in the original proceeding in 142 F. 2d 588, we said at page 591:

"In this case, the District Court found that Goldstein had not testified falsely or recanted. The court had before it for consideration not only the motion for a new trial and the supporting affidavits but, as the trial court, it had also the record made upon the trial and the demeanor of Goldstein and others upon the stand. The trial court also had for consideration Goldstein's affidavits in denial of the so-called newly discovered evidence and the affidavits of others supporting Goldstein. Several of those who made affidavits for the defendants in support of their motion were witnesses at the trial. So it was not merely a printed record that the District Court had before it.

"We cannot say, in the light of the whole record before the District Court, that the so-called newly discovered evidence inevitably leads to the conclusion that Goldstein had testified falsely. We cannot say, as a matter of law, that the District Court erred in its finding. Since the District Court found that there was no false testimony or recantation by Goldstein, the rule discussed in the Larrison case is not applicable.

"Having decided that there was no recantation or false swearing by Goldstein, the District Court then considered the case as any other motion for a new trial on newly discovered evidence would be considered. On such consideration, the court found that the

rule for such motions 'has never been better nor more succinctly stated than' in *Berry v. Georgia*, 10 Georgia 511, which he quoted as follows:

"Upon the following points there seems to be a pretty general concurrence of authority, viz: that it is incumbent upon a party who asks for a new trial, on the ground of newly-discovered evidence, to satisfy the court, 1st. That the evidence has come to his knowledge since the trial, 2d. That it was not owing to the want of due diligence that it did not come sooner, 3d. That it is so material that it would probably produce a different verdict if the new trial were granted, 4th. That it is not cumulative only, viz: speaking to facts, in relation to which there was evidence on the trial, 5th. That the affidavit of the witness himself should be produced, or its absence accounted for. And 6th, a new trial will not be granted, if the only object of the new testimony is to impeach the character or credit of a witness."

"This is the general rule applicable where there has been no showing of recantation or false swearing and the effect of the newly discovered evidence is considered in its relation to a possible new trial. This rule has been followed in the Federal cases and is of almost universal application among the States."

The District Court, having again found that William Goldstein did not commit perjury or recant, has reached a conclusion upon the whole record which I cannot say is unreasonable nor an abuse of discretion. I agree with the District Court that the additional evidence adduced on the amended motion for a new trial on the ground of newly discovered evidence is insufficient to support such a motion, because it is merely cumulative and impeaching, and would probably not produce a different verdict if a new trial were granted.¹

I would reaffirm all we said in *United States v. Johnson*, 142 F. 2d 588. Everything we said there is entirely in harmony with the finding and judgment of the District Court in the case now before us. The judgment of the District Court should be

Affirmed.

And on the same day, to wit: On the second day of May 1945, the following further proceedings were had and entered of record, to wit:

Wednesday, May 2, 1945

Court met pursuant to adjournment.

Before: Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. SHERMAN MINTON, Circuit Judge.

¹ See authorities cited *United States v. Johnson*, 142 F. 2d 588 at page 592.

7500

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.s.

WILLIAM R. JOHNSON, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said District Court with directions that the motion for new trial be allowed.

7501

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.s.

JACK SOMMERS, JAMES A. HARTIGAN, WILLIAM P. KELLY, AND STUART SOLOMON BROWN, DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said District Court with directions that the motion for new trial be allowed.

United States Circuit Court of Appeals for the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the Opinion filed May 2, 1945, and Judgment entered on the same day, in Cause No. 7500-7501, The United States of America, Plaintiff-Appellee vs. William R. Johnson, Defendant-Appellant; The

United States of America, Plaintiff-Appellee vs. Jack Sommer's, James A. Hartigan, William P. Kelly, and Stuart Solomon Brown, Defendants-Appellants, as the same remain upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-third day of May A. D. 1945.

[SEAL]

KENNETH J. CARRICK,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

Supreme Court of the United States

No. 115, October Term, 1945

Order allowing certiorari

Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice MURPHY, Mr. Justice JACKSON, and Mr. Justice BURTON took no part in the consideration or decision of this application.

Supreme Court of the United States

No. 116, October Term, 1945

Order allowing certiorari

Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice MURPHY, Mr. Justice JACKSON, and Mr. Justice BURTON took no part in the consideration or decision of this application.